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OF MONTANA

REVISED CODES OF MONTANA

VOLUME 1

Part 1

1965 Cumulative Pocket Supplement

Containing

AMENDMENTS TO PROVISIONS AND NEW PROVISIONS
APPROVED SINCE PUBLICATION OF REPLACEMENT
VOLUME 1 (PART 1) OF THE 1947 REVISED CODES

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1
(PART 1) THROUGH VOLUME 397, PACIFIC
REPORTER (2ND SERIES)

AND

PARALLEL REFERENCE TABLES SUPPLEMENTING
REPLACEMENT VOLUME 1 (PART 1)

Edited by

A. WAYNE GUERNSEY, A.B., LL. B.

and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY

Publishers

Indianapolis, Indiana



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VOLUME I

Part I

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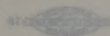
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CONSTITUTIONAL AMENDMENTS IN VOLUME 1 (PART 1)

For index see pocket supplement to Replacement Volume 9

City, town, township, school district, or high school district indebtedness, Art. XIII, sec. 6.

County attorney, qualifications and election, Art. VIII, sec. 19.

District of Columbia voting, U. S. Const. Amd. 23.

Emergency legislative powers, Art. V, sec. 1, note.

Judges and justices, salary, Art. VIII, sec. 29.

Legislative apportionment, Art. V, secs. 4 and 45, notes; Art. VI, secs. 2 to 6, notes.

Poll tax requirement prohibited in federal elections, U. S. Const. Amd. 24.

AMENDMENT 23

1. The district constituting the seat of government of the United States shall appoint in such manner as the congress may direct:

A number of electors of president and vice-president equal to the whole number of senators and representatives in congress to which the district would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of president and vice-president, to be electors appointed by a state; and they shall meet in the district and perform such duties as provided by the twelfth article of amendment.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-third amendment was submitted by Congress on June 16, 1912, declared in force April 3, 1961.

AMENDMENT 24

1. The right of citizens of the United States to vote in any primary or other election for president or vice-president, for electors for president or vice-president, or for senator or representative in congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-fourth amendment was submitted by Congress on January 10, 1962, declared in force February 4, 1964.

AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES

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THE ENABLING ACT

§ 1. * * *

References

Spaberg v. Johnson, 143 M 500, 392
P 2d 78.

§ 11. * * *

Leasing for Underground Storage

The law authorizing the lease of state
lands for underground storage of natural

gas does not violate this section. State ex
rel. Hughes v. State Board of Land
Commrs., 137 M 510, 353 P 2d 331, 335.

§ 25. * * *

Compiler's Note

A note under this section in the parent
volume refers to an act of congress, ch.

183, 62 Stat, at L. 170. The correct date
of the act is April 13, 1948, not 1949 as
shown in the parent volume.

CONSTITUTION OF THE STATE OF MONTANA

ARTICLE III—A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA

Sec. 1.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

Sec. 2.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 909, 912.

Sec. 3.

Statutes Invalid under This Provision

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or

other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Sec. 4.

Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farm-

ing, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Sec. 8.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

Sec. 11.

Ex Post Facto Application

A parole and probation statute which had not been in effect at the time prisoner began serving his sentence but was in effect following a new trial in which prisoner was reconvicted and began again serving a ten-year sentence, which had the

effect of increasing prisoner's time by allowing less time off for good behavior than did the prior probation law, was ex post facto as to that prisoner. *State ex rel. Nelson v. Ellsworth*, 142 M 14, 380 P 2d 886.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 918.

Sec. 14.

Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, R. C. M. 1947, that a portion of platted subdivisions be dedicated to public park purposes are not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. *Billings Properties, Inc. v. Yellowstone County*, — M —, 394 P 2d 182.

Damages Comprehended by This Provision

Where plaintiff's property was within the announced route of proposed interstate highway and he was therefore unable to sell, lease, develop or finance said property for a period of five years after the announcement, he was allowed no recovery under this section as no property was actually taken or damaged by the state. *Bakken v. State Highway Commission*, 142 M 166, 382 P 2d 550.

Easement as Property

A ditch is an easement, is property as used in this section, and may not be taken for public purpose without just compensation. *Colarchik v. Watkins*, — M —, 393 P 2d 786.

Just Compensation

In eminent domain proceedings, the jury findings will generally not be dis-

Sec. 15.

Rights-of-Way of Necessity

There are no implied grants or reservations of rights-of-way of necessity in Montana. Property for roads must be con-

Sec. 16.

Competency of Court-appointed Counsel

Failure of court-appointed counsel to object to certain remarks by the prosecutor was not alone sufficient to deprive defendant of due process under this section in the absence of a showing that counsel displayed such a lack of diligence and competence as to reduce the trial to a "farce or a sham." *State v. Noller*, 142 M 35, 381 P 2d 293.

The provisions of section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 35.

turbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided by this section. *State v. Peterson* 134 M 52, 328 P 2d 617, 620.

An owner may testify as to the reasonable value of the property for the general use to which he is putting it, but to go beyond that field, in estimating its worth, he must possess the qualifications required of a general witness as to value. *Alexander v. State Highway Commission*, 142 M 93, 381 P 2d 780, distinguished in 142 M 256, 260, 384 P 2d 770; *State Highway Commission v. Keneally*, 142 M 256, 384 P 2d 770.

Payment or Tender of Compensation

Where party sued the state for damages and just compensation, the action was treated as any other damage action and on appeal plaintiff could not claim it to be an inverse condemnation action and require the state to pay into court the amount of damages prayed for in the complaint. *State ex rel. State Highway Commission v. District Court*, 142 M 198, 383 P 2d 481.

References

Cited or applied in *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270, 273.

demned. *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984, overruling *Herrin v. Sieben*, 46 M 226, 127 P 323, and *Violet v. Martin*, 62 M 335, 205 P 221.

Perfection of Appeal

Even though supreme court dismissed appeal in criminal case because court-appointed counsel was late in filing notice of appeal, the court considered the questions presented on appeal because defendant had no voice in the appointment of counsel. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

Right to Introduce Evidence

In a murder prosecution the court properly refused to permit the defendant to introduce the results of a lie-detector test given five and one-half months after the crime to which it referred. *State v. Hollywood*, 138 M 561, 358 P 2d 437, 444.

Sec. 18.**Double or Former Jeopardy**

Defendant charged with sale of intoxicating liquor to a minor was not placed in former jeopardy in violation of this section, by a dismissal of the complaint upon his demurrer in justice court without any further proceedings. *State v. Moore*, 138 M 379, 357 P 2d 346, 347.

Sec. 19.**Amount of Bail**

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probability of the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 362; *State v. Moran*, 142 M 423, 384 P 2d 777.

Where the defendant was charged with twenty-two counts of statutory rape, conviction on one or more of those counts could not be imposed as a bar to a prosecution for any of the other offenses charged, and where they were set forth separately in the information, there was no violation of state or federal constitutional prohibitions. *State v. Boe*, 143 M 141, 388 P 2d 372.

the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407.

Court did not err in refusing defendant's motion to reduce bail which was initially set at \$25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to \$7,500 which was a very reasonable amount. *State v. McLeod*, 131 M 478, 311 P 2d 400, 407, 408.

Sec. 20.**Tax Penalty**

The double penalty provided for in the income tax statute (84-4924, subd. 2, before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1063.

Sec. 23.**References**

Cited or applied in *Application of Banschbach*, 133 M 312, 323 P 2d 1112,

References

Cited in *State v. McLeod*, 131 M 478, 311 P 2d 400, 407; *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

1113; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139.

Sec. 27.**Arbitrary Exercise of Licensing Power**

The arrest of a person for operating a dry cleaning call office within the city without a license, where city's licensing ordinance did not cover such a business, violated the provisions against the taking of property without due process of law. *State ex rel. Willumsen v. City of Butte*, 135 M 350, 340 P 2d 535.

Criminal Appeals

Dismissal of a criminal appeal for fail-

ure to file timely notice of appeal is not a denial of due process, even though the failure was that of court-appointed counsel in whose appointment defendant had no voice. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 419.

Destruction of Property Without a Trial or Hearing

Proceedings for the destruction of property in many cases must necessarily be summary and without a previous trial or

hearing in such cases, and such proceedings are due process. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Fundamental Rights

"Due process of law" refers to and means certain fundamental rights which our system of jurisprudence has always recognized, that is, of requiring notice to be given and a hearing had before the property may be taken, or impressed with a lien, giving to the owner thereof these constitutional prerogatives. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 505, distinguished in 138 M 69, 354 P 2d 1056, 1058.

Hearings by Public Service Commission

Where audit had been requested in utility rate increase case by opponents of increase, both sides were given ample time to present evidence and cross-examine witnesses, opponents were permitted to go into utility books with expert witnesses, and the public service commission hired independent rate experts, opponents were not denied a full and fair hearing because of posthearing audit made by the employees of the commission. *Cascade County Consumers Assn. v. Public Service Commission*, — M —, 394 P 2d 856, 869. (Dissenting opinion, — M —, 394 P 2d 856, 875.)

Although section 70-104 authorizes an informal hearing by public service commission in proceedings to set aside rate increases, fundamentals of fair hearing were denied parties opposing rate increase when a hearing was held by the public service commission when the opponents were not present, and when the testimony of that hearing was not spread on the record. *Cascade County Consumers Assn. v. Public Service Commission*, — M —, 394 P 2d 856, 864. (Dissenting opinion, — M —, 394 P 2d 856, 875.)

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 918.

The health district law (sections 69-801 to 69-814) does not violate this section. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1058.

Milk Control Act

The price-fixing provisions of the Milk Control Act (27-401 et seq.) withstand the due process test. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

Rural Fire Districts Law

Rural fire districts law, sections 11-2008, 11-2009, before 1957 amendment, was unconstitutional as being in direct conflict with this section. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 354 P 2d 1058.

Statutes and Proceedings Held Valid Under This Provision

A city, the chief of police, and police officers were not liable to a dog owner for damages, where the owner's dog was killed by officers acting under an emergency quarantine measure which was passed to meet a threatening situation involving rabies. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29.

A rule made by a board of health which has a relation to securing protection from bites of animals which may be rabid is a proper exercise of its functions, and determination of the means of meeting a threatening situation has been vested in the board of health, and not in the courts. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Sufficiency of Evidence

Where medical testimony pertaining to defendant's antisocial nature and difficulty in controlling his sexual impulses may have established the defendant as a sexual deviate who should be confined for the protection of society, but was not sufficient to sustain the charge of attempting to commit a lewd and lascivious act upon a child, it was reversible error to convict the defendant of the felony. *State v. Green*, 143 M 234, 388 P 2d 362.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. (2), before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1064.

References

Cited in *State ex rel. Burns v. City of Livingston*, — M —, 395 P 2d 971, 973.

Sec. 29.**Taxation**

The "unless" clause of this section operates in the area of taxation and Art. XII, section 1a, authorizing an income tax, is merely permissive. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F

Supp 274, 279; *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 653; *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139; *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 801, 78 ALR 2d 1012; *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556; *State ex rel. Steen v. Murray*, — M —, 394 P 2d 761, 763.

ARTICLE IV—DISTRIBUTION OF POWERS**Sec. 1.****Counties**

Counties are administrative or executive bodies of the state and the same rules apply as apply to any state agency in so far as this section is concerned. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1024.

Delegation of Powers by the Legislature

Sections 69-809 and 69-813 relating to health districts violate this section by delegating legislative power to a board. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1063.

Chapter 41 of Title 16, giving the county commissioners power to establish zoning districts and to create a commission, contains sufficient guidelines so that it is not an invalid delegation of legislative pow-

ers. *City of Missoula v. Missoula County*, 139 M 256, 362 P 2d 539, 542, explained in 362 P 2d 1021, 1023; *Doull v. Wohlschlager*, 139 M 274, 362 P 2d 542, 543.

The provisions of section 11-3801 et seq., granting zoning powers to city-county planning boards and to county commissioners, are invalid as an unauthorized delegation of legislative power to counties. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dissenting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Billings Properties, Inc. v. Yellowstone County*, — M —, 394 P 2d 182.

ARTICLE V—LEGISLATIVE DEPARTMENT**Sec. 1.****Proposed New Section**

Chapter 243, Laws 1965, proposes to add a new section to the Constitution. The new section proposed would read:

"Section —. The legislative assembly in order to insure continuity of state and local governmental operations in a period of emergency resulting from a disaster caused by enemy attack may enact laws:

"(1) To provide for prompt and temporary succession to the powers and duties of elected and appointed public officers who are killed or incapacitated.

"(2) To adopt other measures that may be necessary to insure the continuity of governmental operations.

"Such laws shall be effective only during the emergency that affects a particular office or governmental operation, and such laws may deviate from other provisions of the Montana constitution, including but not limited to the following sections:

"(1) Section 3, Article X, seat of state government.

"(2) Section 2, Article XVI, seat of county governments.

"(3) Section 16, Article VII, succession to governor.

"(4) Section 4, Article XVI, vacancy on board of county commissioners.

"(5) Section 6, Article XVI, other vacancies in county government.

"(6) Section 45, Article V, vacancies in legislative assembly.

"(7) Section 11, Article VII, special legislative sessions.

"(8) Section 5, Article V, length of legislative session.

"(9) Section 10, Article V, quorum to do business in each house.

"(10) Section 6, Article XIX, location of county offices.

"(11) Section 1, Article VII, duties of executive officers of state.

"(12) Section 7, Article VII, appointments by governor."

References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dis-

senting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

Sec. 4.

Proposed Repeal

Chapter 273, Laws 1965, proposes to repeal this section.

Sec. 5.

Cross-Reference

Proposed amendment that would permit deviation from this section under emer-

gency conditions, see note to section 1, Article V.

Sec. 10.

Cross-Reference

Proposed amendment that would permit deviation from this section under

emergency conditions, see note to section 1, Article V.

Sec. 11.

References

State ex rel. *Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

Sec. 20.

References

Cited in *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 654.

Sec. 23.

Acts Not Violating this Provision

Laws of 1955, chapter 204, amending section 84-4502 and carrying a title which is practically identical with the heading of this section as stated in the 1947 Codes and properly including additional requirements for bringing actions to recover taxes paid under protest, does not violate this constitutional provision. *Van Tighem v. Linnane*, 136 M 547, 349 P 2d 569, 571.

The title of the County Water District Act (16-4501 to 16-4534) does not violate this section. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 334.

Effect of Subsequent Codification on Defect

Section 91-4321 as it is now written was enacted in 1943, and was carried forward in our Codes of 1947 without change. The 1947 Codes were regularly adopted by the legislature with this act incorporated therein without reference to its original title. Any defect in title was cured by its adoption into the 1947 Code. *State v. Rice*, 134 M 265, 329 P 2d 451, 453.

Initiative Measure Unconstitutional

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, containing more than one subject, violated this section. *State ex rel. Steen v. Murray*, — M —, 394 P 2d 761, 764.

Sec. 24.

References

State ex rel. *Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

Sec. 26.

Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of

divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Interest on Retail Installment Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by section 47-125 and constituted a special law regulating the rate of interest on money, proscribed by this section, the federal court applied the abstention doctrine and postponed further action until the issue was determined by the supreme court of Montana. *B-W Acceptance Corp. v. Torgerson*, 234 F Supp 214, 216.

Sec. 29.**Relocation of Utilities**

The provisions of section 32-1625, relating to the costs of relocating utility facilities,

Operation and Effect in General

Chapter 34, Laws of 1957 (43-709 to 43-715), creating the legislative council, does not violate this section. *State ex rel. James v. Aronson*, 132 M 120, 314 P 2d 849, overruling *State ex rel. Mitchell v. Holmes*, 128 M 275, 274 P 2d 611.

Special or Local Laws Forbidden

(Deduction of workmen's compensation benefits in determining retirement pay of public employee.) The provision in section 68-901, subd. (h), requiring the deduction of workmen's compensation benefits in determining the retirement pay of a public employee who is receiving workmen's compensation for a total disability is unconstitutional discriminatory in treating totally disabled employees less favorably than those only partially disabled. *State ex rel. Morgan v. White*, 136 M 470, 348 P 2d 991.

ties, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 35.

Sec. 32.**Construction**

This section refers to the raising of money for defraying the expenses of the general government. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 648.

License Tax

Bills imposing tax or license fee to enforce policing regulation are not revenue raising measures. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 648.

Local Taxes

Laws delegating authority to local governmental units to levy and collect taxes

for local purposes are not bills for "raising revenue" within the meaning of this section. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 649.

Operation and Effect

Chapter 197, Laws of 1957, authorizing indebtedness to be incurred by state for construction of educational facilities is illegal, unconstitutional and void, for the reason that it was a revenue bill which originated in the senate, contrary to the interdiction of this section. *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 654.

Sec. 34.**Laws Not Violating This Provision**

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 920.

Sec. 35.**Laws Violating This Provision**

An appropriation made to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort Harrison, Montana, which were not under the control of the state, was

prohibited by this section even though the legislation was for a public purpose. *Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars*, 141 M 500, 379 P 2d 107.

Sec. 36.**Laws Not Violating This Provision**

Section 27 of the County Water Dis-

trict Act (16-4527) does not violate this section by delegating to a corporation the

power to tax for the general health, safety, and welfare of property owners without regard to benefits to the property so taxed. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 331.

Sec. 39.

Relocation of Utilities

The provisions of section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 36.

Sec. 40.

Constitutional Amendments

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

The price-fixing provisions of the Milk Control Act (sections 27-401 (k), 27-405 (2), 27-407, 27-416) do not violate the provisions of this section. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 515, 516.

References

In re *Montana Trust and Legacy Fund*, 143 M 218, 388 P 2d 366; *United States v. Christensen*, 218 F Supp 722, 729.

Sec. 45.

Proposed Repeal

Chapter 273, Laws 1965, proposes to repeal this section.

Cross-Reference

Proposed amendment that would permit deviation from this section under emergency conditions, see note to section 1, Article V.

ARTICLE VI—APPORTIONMENT AND REPRESENTATION

Sec. 2.

Proposed Amendment

Chapter 273, Laws 1965, proposes to amend this section to read as follows:

"Section 2. (1) The senate and house of representatives of the legislative assembly each shall be apportioned on the basis of population.

"(2) The legislative assembly following each census may by the authority of the United States, shall revise and adjust

the apportionment for representatives and senators on the basis of such census.

"(3) At such time as the constitution of the United States is amended or interpreted to permit apportionment of one house of a state legislative assembly on factors other than population, the senate of the legislative assembly shall be apportioned on the basis of one senator for each county."

Sec. 3.

Proposed Amendment

Chapter 273, Laws 1965, proposes to amend this section to read as follows:

"Section 3. Senatorial and representative districts may be altered from time to

time as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the districts as compact as may be."

Secs. 4 to 6.

Proposed Repeal

Chapter 273, Laws 1965, proposes to repeal these three sections.

ARTICLE VII—EXECUTIVE DEPARTMENT

Sec. 1.

Cross-Reference

Proposed amendment that would permit deviation from this section under emer-

gency conditions, see note to section 1, Article V.

References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting

opinion); *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 931.

Sec. 7.

Cross-Reference

Proposed amendment that would permit deviation from this section under emer-

gency conditions, see note to section 1, Article V.

Sec. 9.

Parole

The board of pardons has no power to pardon or commute a sentence, and when it grants a parole, the effect is not to

extinguish the sentence but merely to change the conditions of custody. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 556.

Sec. 11.

Cross-Reference

Proposed amendment that would permit deviation from this section under emer-

gency conditions, see note to section 1, Article V.

Sec. 12.

Constitutional Amendments

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

Sec. 15.

Casting Deciding Vote

The lieutenant governor of Montana, while presiding as president of the senate, possessed the requisite power to enable or entitle him to cast the deciding vote on third reading of House Bill No. 342, as amended [1961 amendment of section 31-135], at a time when the senators then present and voting were equally di-

vided. *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

Sec. 16.

Cross-Reference

Proposed amendment that would permit deviation from this section under

emergency conditions, see note to section 1, Article V.

Sec. 20.

References

Cited or applied in *State v. Rother*, 130

M 357, 303 P 2d 393 at 401 (dissenting opinion).

ARTICLE VIII—JUDICIAL DEPARTMENTS

Sec. 1.

References

City of Bozeman v. Ramsey, 139 M 148,

362 P 2d 206, 211; *State v. Frodsham*, 139 M 222, 362 P 2d 413, 416.

Sec. 2.

References

State v. Frodsham, 139 M 222, 362 P

2d 413, 416; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1.

Sec. 3.

Exclusive Power

The constitution vests in the courts the exclusive power to construe and interpret legislative acts, as well as provisions of the constitution. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 913.

Scope of Power to Issue Writs in General

Even if a stay, in a case where a writ of mandate is issued by a district court to compel the issuance of a license, is not provided for in the code, still the supreme

court has power under this section to issue a supersedeas, or other appropriate writ, to effectuate its appellate jurisdiction, thus to insure the aggrieved board an appeal that otherwise might be of no value. *Gill v. Rafn*, 133 M 505, 326 P 2d 974, distinguished in 136 M 453, 456, 348 P 2d 797, 799.

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1.

Sec. 11.

Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Prohibition—Ministerial Function

This section does not give the district courts the jurisdiction to issue a writ of prohibition to control the discretion of an

administrative body in carrying out a ministerial function. *State ex rel. Lee v. Montana Livestock Sanitary Board*, 135 M 202, 339 P 2d 487.

References

Cited or applied in *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092; *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38; *State ex rel. Glacier General Assurance Co. v. District Court*, 143 M 569, 393 P 2d 54.

Sec. 12.

References

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38.

Sec. 14.

References

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38.

Sec. 15.

Notice of Appeal

Even though the supreme court dismissed an appeal in a criminal case because of failure to file timely notice of appeal, the court considered the questions raised, where the fault was that of court-appointed counsel in whose appointment

defendant had no voice. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

References

Cited in *Gill v. Rafn*, 133 M 505, 326 P 2d 974; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1.

Sec. 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

Compiler's Note

This constitutes sec. 19 of article VIII

as amended by act approved March 6, 1961 (Ch. 164, Laws 1961), adopted at

the general election of November, 1962. This amendment increased the county attorneys' term of office from two to four

years and eliminated a provision applicable only to the first county attorneys elected under the Constitution.

Sec. 24.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

Sec. 28.

References

Cited or applied in First Nat. Bank of

White Sulphur Springs v. Stoyanoff, 137 M 20, 349 P 2d 1016, 1020.

Sec. 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be diminished during the terms for which they shall have been respectively elected.

Compiler's Note

This constitutes sec. 29 of article viii as amended by act approved February 27, 1963 (Ch. 92, Laws 1963), adopted at the general election of November 3, 1964.

This amendment eliminated a provision prohibiting salary increases during terms for which elected, and it also deleted a sentence setting the salaries of the first justices and judges.

ARTICLE IX—RIGHTS OF SUFFRAGE AND QUALIFICATIONS TO HOLD OFFICE

Sec. 2.

Operation and Effect

This section, in adding the property holding qualification to voting on debts or liabilities, confined the additional qualification to only those debts or liabilities which look to ad valorem taxes for their retirement. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 915.

This section amended the words "debt or liability" as they appear in section 2, article XIII of the Montana Constitution, and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 916.

ARTICLE X—STATE INSTITUTIONS AND PUBLIC BUILDINGS

Sec. 3.

Cross-Reference

Proposed amendment that would permit deviation from this section under emer-

gency conditions, see note to section 1, Article V.

ARTICLE XI—EDUCATION

Sec. 1.

References

Cited in State ex rel. Ronish v. School

Dist. No. 1, 136 M 453, 348 P 2d 797, 800, 78 ALR 2d 1012.

Sec. 7.

Operation and Effect

The use of the term "all" is not to be taken in its universal and omnibus sense; rather, it was meant to be limited and qualified to conform to good reason to carry out the other purposes of the constitution such as to have a general, uni-

form and thorough system of public schools. State ex rel. Ronish v. School Dist. No. 1, 136 M 453, 348 P 2d 797, 78 ALR 1012.

A reasonable interpretation of constitutional and statutory provisions specifying that school shall be open to children be-

tween the ages of 6 and 21 years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year, after reaching his sixth birthday. Each local school district has the power to

admit children into the first grade who are not yet 6 years of age and each school district may establish a "cut-off" date governing entry into the first grade. *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 78 ALR 2d 1012.

Sec. 11.

Delegation of Powers

The legislature in sections 75-107 and 75-403 R. C. M. 1947, has restricted the board of education in delegation of its powers and this precludes college officials

from contracting with teachers and instructors on behalf of the board. *Brown v. State Board of Education*, 142 M 547, 385 P 2d 643.

Sec. 12.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

ARTICLE XII—REVENUE AND TAXATION

Sec. 1.

Construction with Other Sections

This section and section 11 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

License Tax—Purposes for Which License Tax May Be Levied

It was not the intention in authorizing the legislature to impose a license fee, to differentiate between the license tax, so-called, and the license fee extracted in

regulatory matters, but rather to refer the general subject of licenses to the legislature. *Montana Milk Control Board v. Maier*, 140 M 38, 367 P 2d 305, 306.

Statutes Held Invalid under This Provision

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax, was unconstitutional under this section. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Sec. 1a.

Income Tax

The provisions of section 84-4905, before the 1955 amendment, relating to adjusted gross income, did not violate this section. *State ex rel. Anderson v. State Board of Equalization*, 133 M 8, 319 P 2d 221, 228.

This section does not impose an affirmative duty to replace property taxes entirely

with income taxes. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

The mere fact that the income-tax law does not operate simultaneously upon the incomes of persons, firms, and corporations does not make it invalid. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

Sec. 2.

Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farming, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Statutes Held Invalid under This Provision

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax for nonpublic purpose, was unconstitutional under this section. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Sec. 3.**Adverse Possession**

One in actual possession of surface land, who owned it in fee simple and paid taxes upon it for over thirty years, could not acquire an undivided one-fourth mineral interest, reserved in a deed and thereby severed entirely from the land, by adverse possession, where the minerals were not and could not be assessed separately for taxation under this section. *Johnson v. Unknown Heirs*, 140 M 128, 368 P 2d 577, 581.

Annual Net Proceeds Tax

"Average of annual net proceeds" as provided by section 84-5408, as amended

Sec. 11.**Construction with Other Sections**

This section and section 1 of article XII of the Montana constitution must be construed together with section 15, which

Sec. 12.**Laws Not Violating This Provision**

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

Sec. 15.**Construction with Other Sections**

Sections 1 and 11, of article XII of the Montana constitution must be construed together with this section. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

Intervention of Court

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

Powers of State Board of Equalization

Board is charged with the duty of adjusting and equalizing the valuation of all taxable property among the several counties and between individual taxpayers. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

The state board of equalization has the power to determine what a particular class should include. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Where the board held "show cause hearings" to afford opportunity to protest board's order of uniform county land value reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was

in 1959, is not the same as the "annual net proceeds" provided by this section and therefore the law is unconstitutional. *State ex rel. Roberts v. State Board of Equalization*, 138 M 138, 355 P 2d 150, 152.

"Mining Claim"

A "mining claim" is not restricted to a single mining location but may include as many locations as a miner can purchase, and the ground covered by all will constitute a mining claim. *United States Gypsum Co. v. Schreiner*, 135 M 312, 340 P 2d 548.

refers specifically to the state board of equalization. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 920.

kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. *State ex rel. State Board of Equalization v. Kovich*, 142 M 201, 383 P 2d 818.

Uniformity of Taxation

As long as the state board of equalization treats property of similar nature and productivity the same, it cannot be said that the constitutional mandate of uniformity is not subserved. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Under the Montana constitution the state board of equalization has the power, in adjusting and equalizing taxation between oil pipelines and other properties, i.e., town and city lots, to recognize pipelines as a class in itself, and still not violate the requirement of uniformity. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Writ of Prohibition

District court acted prematurely in issuing writ prohibiting state board of equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented board from discharging

its constitutional duties. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

Sec. 16.

Relocation of Utilities

The provisions of section 32-1625, relating to the costs of relocation of utility

References

Cited in *Blair v. Potter*, 132 M 176, 315 P 2d 177, 182.

facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 33.

ARTICLE XIII—PUBLIC INDEBTEDNESS

Sec. 1.

Laws Violating This Provision

An appropriation to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort Harrison, Montana, which were not under the control of the state, was prohibited by this section even though the legislation was for a public purpose. *Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars*, 141 M 500, 379 P 2d 107.

Relocation of Utilities

The provisions of section 32-1625, relating to the costs of relocation of utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 34.

References

Wilson v. State Highway Commission, 140 M 253, 370 P 2d 486, 487.

Sec. 2.

"Debt or Liability"

Section 2, article IX of the Montana constitution amended the words "debt or liability" as they appear in this section and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 916.

ing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums was not required to be submitted to the voters under this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 915, 916.

References

Cited in *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 649.

Laws Not Violating This Provision

Statute amending initiative act provid-

Sec. 6. No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

Compiler's Note

This constitutes sec. 6 of article XIII as amended by act approved March 7,

1957 (Ch. 161, Laws of 1957), adopted at the general election of November 1958, effective under governor's proclamation,

December 8, 1958. This amendment inserted the words "high school district" each time they appear and inserted the phrase "and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section."

Lease Payments

Under resolution providing that city would convey title to properties to party

who would cause to be built on one property a city approved building which the city would rent for an annual rental for a period of three years with option in the city to purchase property together with the building thereon, lease payments were forms of indebtedness within the meaning of this section. *State ex rel. Simmons v. City of Missoula*, — M —, 395 P 2d 249, 251.

ARTICLE XV—CORPORATIONS OTHER THAN MUNICIPAL

Sec. 4.

Operation and Effect

A corporation may not deprive a stockholder of the right of cumulative voting by any act on its part. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Stockholders may contract among themselves with respect to voting their stock

and a contract to refrain from cumulative voting is valid. However, an invalid bylaw, attempting to dispense with cumulative voting, was not enforceable as a contract, even among those stockholders assenting to it. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Sec. 9.

Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, R. C. M. 1947, that a portion of platted subdivisions be dedicated to public park purposes is not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. *Billings Properties, Inc. v. Yellowstone County*, — M —, 394 P 2d 182.

Operation and Effect

Under the guise of police power the state and municipal subdivisions thereof have the power and the duty to do all things necessary to protect the public in matters of the preservation, among other things of the health and well being of the community. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 30.

Under police power the state can provide for the destruction of diseased animals even though provision for compensation to the owner has not been made. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Sec. 13.

Lease of State Lands

The law authorizing the lease of state lands for underground storage of natural

gas does not violate this section. *State ex rel. Hughes v. State Board of Land Commrs.*, 137 M 510, 353 P 2d 331, 336.

Sec. 20.

Fair Trade Act

The Fair Trade Act (sections 85-201 to 85-208) permits price-fixing in violation of this section and is therefore invalid. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644.

Operation and Effect

The activity proscribed by this section has no relation to police power. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

Price-Fixing

This section is not only aimed at monopolies but also invalidates all price-fixing contracts, even in situations where there is open competition and no danger of monopoly. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644.

References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F Supp 274, 279.

ARTICLE XVI—COUNTIES—MUNICIPAL CORPORATIONS AND OFFICES

Sec. 2.

Cross-Reference

Proposed amendment that would permit deviation from this section under emerg-

ency conditions, see note to section 1, Article V.

Sec. 4.

Cross-Reference

Proposed amendment that would permit deviation from this section under emerg-

ency conditions, see note to section 1, Article V.

Sec. 5.

References

Husky Hi Power, Inc. v. Schmidt, 140 M 353, 372 P 2d 142, 144.

Sec. 6.

Cross-Reference

Proposed amendment that would permit deviation from this section under emerg-

ency conditions, see note to section 1, Article V.

Sec. 7.

City-County Government

A city-county planning board established without reference to the electors

was in violation of this section. Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

ARTICLE XVII—PUBLIC LANDS

Sec. 1.

Leasing for Underground Storage

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 335.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

Sec. 2.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

Sec. 3.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

ARTICLE XIX—MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS

Sec. 2.

Initiative Measure Unconstitutional

Proposed initiative measure no. 63 which would legalize lotteries and repeal

sections 94-3001 to 94-3011 is unconstitutional. State ex rel. Steen v. Murray, — M —, 394 P 2d 761, 763.

Operation and Effect

The framers of the constitution were seeking to suppress and restrain the spirit of gambling which is cultivated and stimulated by schemes whereby one is induced to hazard his earnings with the hope of large winnings. The statutes which define and prohibit lotteries must therefore be interpreted with this purpose in mind. *State v. Cox*, 136 M 507, 349 P 2d 104, 106.

The provisions of this section are both mandatory and prohibitory. *State ex rel. Steen v. Murray*, — M —, 394 P 2d 761, 763.

Sec. 6.

Cross-Reference

Proposed amendment that would permit deviation from this section under emerg-

Sec. 8.

Initiative Measure

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, could not be considered as an amendment to the Mon-

Sec. 9.

Cross-Reference

Explanatory statement of proposed Constitutional amendments to be prepared by attorney general, sec. 37-104.1.

Initiative Measure

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, could not be considered as an amendment to the Montana constitution where it did not comply with this section or section 8, article XIX.

Valuable Consideration

Where one is required to make an outlay of money in order to participate in a scheme whereby an award is made by chance, the participant pays valuable consideration for the chance to participate, notwithstanding the fact he may also receive merchandise at the same time that the outlay is made. *State v. Cox*, 136 M 507, 349 P 2d 104. (*State ex rel. Stafford v. Fox-Great Falls Theatre Corp.*, 114 M 52, 132 P 2d 689, distinguished.)

ency conditions, see note to section 1, Article V.

tana constitution where it did not comply with this section or section 9, article XIX. *State ex rel. Steen v. Murray*, — M —, 394 P 2d 761, 764.

State ex rel. Steen v. Murray, — M —, 394 P 2d 761, 764.

Presentation to Governor

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

ARTICLE XXI—MONTANA TRUST AND LEGACY FUND

Sec. 1.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 6.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 7.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 17.

Sale of Securities

The securities which constitute these funds may be sold before maturity for the benefit of the funds and the state institutions for which they were created, and

may even be sold for less than face value provided that the sale price is not less than the purchase price. In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

TABLE OF CORRESPONDING CODE SECTIONS

Revised Codes 1921 and 1935 to Revised Codes 1947

This table shows the disposition made of the sections of the Revised Codes of 1921 and the Revised Codes of 1935 since publication of Replacement Volume 1.

1921 & 1935	1947	1921 & 1935	1947
61-64	Rep. Ch. 1, Sec. 4, L. 1965	1212	Rep. Ch. 75, Sec. 1, L. 1961
66, 67	Rep. Ch. 1, Sec. 4, L. 1965	1413	Rep. Ch. 199, Sec. 101, L. 1965
69-73	Rep. Ch. 1, Sec. 4, L. 1965	1414	Rep. Ch. 266, Sec. 82, L. 1963
76-78.3	Rep. Ch. 1, Sec. 4, L. 1965	1415	Rep. Ch. 199, Sec. 101, L. 1965
137	Rep. Ch. 80, Sec. 14, L. 1961	1416, 1417	Rep. Ch. 266, Sec. 82, L. 1963
148	Rep. Ch. 177, Sec. 51, L. 1965	1429	Rep. Ch. 198, Sec. 2 and
153	Rep. Ch. 147, Sec. 242, L. 1963		Ch. 213, Sec. 9, L. 1963
179	Rep. Ch. 147, Sec. 242, L. 1963	1444	Rep. Ch. 213, Sec. 9, L. 1963
188	Rep. Ch. 177, Sec. 51, L. 1965	1445	Rep. Ch. 112, Sec. 15, L. 1963
198.1-198.8	Rep. Ch. 147, Sec. 242, L. 1963	1446	Rep. Ch. 112, Sec. 15 and
			Ch. 266, Sec. 82, L. 1963
201	Rep. Ch. 177, Sec. 51, L. 1965	1447-1450	Rep. Ch. 112, Sec. 15, L. 1963
202	Rep. Ch. 129, Sec. 1, L. 1963	1451, 1452	Rep. Ch. 112, Sec. 15 and
204, 205	Rep. Ch. 129, Sec. 1, L. 1963		Ch. 213, Sec. 9, L. 1963
219	Rep. Ch. 129, Sec. 1, L. 1963	1453-1455	Rep. Ch. 112, Sec. 15, L. 1963
223	Rep. Ch. 177, Sec. 51, L. 1965	1484-1485	Rep. Ch. 199, Sec. 101, L. 1965
238-241	Rep. Ch. 97, Sec. 32, L. 1961	1486, 1487	Rep. Ch. 266, Sec. 82, L. 1963
249	Rep. Ch. 97, Sec. 32, L. 1961	1488	Rep. Ch. 199, Sec. 101, L. 1965
251-253	Rep. Ch. 80, Sec. 14, L. 1961	1489-1492	Rep. Ch. 266, Sec. 82, L. 1963
254	Rep. Ch. 271, Sec. 33, L. 1963	1493-1497	Rep. Ch. 199, Sec. 101, L. 1965
255-259	Rep. Ch. 80, Sec. 14, L. 1961	1498-1500	Rep. Ch. 266, Sec. 82, L. 1963
259.2	Rep. Ch. 271, Sec. 33, L. 1963	1503-1506	Rep. Ch. 199, Sec. 101, L. 1965
259.4	Rep. Ch. 271, Sec. 33, L. 1963	1511	Rep. Ch. 199, Sec. 101, L. 1965
263-266	Rep. Ch. 80, Sec. 14, L. 1961	1512-1515	Rep. Ch. 266, Sec. 82, L. 1963
268, 269	Rep. Ch. 80, Sec. 14, L. 1961	1516-1517	Rep. Ch. 199, Sec. 101, L. 1965
274	Rep. Ch. 80, Sec. 14, L. 1961	1518	Rep. Ch. 266, Sec. 82, L. 1963
290	Rep. Ch. 177, Sec. 51, L. 1965	1519	Rep. Ch. 199, Sec. 101, L. 1965
295-298	Rep. Ch. 158, Sec. 11, L. 1959	1520	Rep. Ch. 189, Sec. 2, L. 1959
301	Rep. Ch. 147, Sec. 242, L. 1963	1521-1523	Rep. Ch. 213, Sec. 9, L. 1963
303	Rep. Ch. 158, Sec. 11, L. 1959	1524	Rep. Ch. 266, Sec. 82, L. 1963
306	Rep. Ch. 81, Sec. 3, L. 1961	1525	Rep. Ch. 199, Sec. 101, L. 1965
310-315	Rep. Ch. 271, Sec. 33, L. 1963	1526	Rep. Ch. 266, Sec. 82, L. 1963
317-319	Rep. Ch. 271, Sec. 33, L. 1963	1527-1528	Rep. Ch. 199, Sec. 101, L. 1965
349.65	Rep. Ch. 147, Sec. 242, L. 1963	1529-1532	Rep. Ch. 266, Sec. 82, L. 1963
368	Rep. Ch. 129, Sec. 1, L. 1963	1533	Rep. Ch. 199, Sec. 101, L. 1965
376	Rep. Ch. 177, Sec. 51, L. 1965	1534	Rep. Ch. 266, Sec. 82, L. 1963
391	Rep. Ch. 264, Sec. 10-102, L. 1963	1535-1536	Rep. Ch. 199, Sec. 101, L. 1965
437, 438	Rep. Ch. 202, Sec. 3, L. 1959	1537	Rep. Ch. 266, Sec. 82, L. 1963
440	Rep. Ch. 202, Sec. 3, L. 1959	1538	Rep. Ch. 199, Sec. 101, L. 1965
464-465	Rep. Ch. 177, Sec. 51, L. 1965	1539, 1540	Rep. Ch. 266, Sec. 82, L. 1963
469-470	Rep. Ch. 177, Sec. 51, L. 1965	1541	Rep. Ch. 199, Sec. 101, L. 1965
519-521	Rep. Ch. 80, Sec. 14, L. 1961	1542-1544	Rep. Ch. 266, Sec. 82, L. 1963
663	Rep. Ch. 156, Sec. 11, L. 1965	1545	Rep. Ch. 199, Sec. 101, L. 1965
666	Rep. Ch. 156, Sec. 11, L. 1965	1546, 1546.1	Rep. Ch. 266, Sec. 82, L. 1963
673.2	Rep. Ch. 156, Sec. 11, L. 1965		
673.6-673.7	Rep. Ch. 156, Sec. 11, L. 1965	1575.3, 1575.4	Rep. Ch. 215, Sec. 3, L. 1965
812.14	Rep. Ch. 20, Sec. 3, L. 1959	1576-1579	Rep. Ch. 190, Sec. 1, L. 1959
1105-1112	Rep. Ch. 26, Sec. 1, L. 1961	1760.1-1760.6	Rep. Ch. 101, Sec. 1, L. 1959
1199	Rep. Ch. 79, Sec. 1, L. 1961		

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1921 & 1935	1947	1921 & 1935	1947
1763.6	Rep. Ch. 256, Sec. 5, L. 1965	4079-4127	Rep. Ch. 264, Sec. 10-102, L. 1963
1805.30	Rep. Ch. 257, Sec. 10, L. 1965	4134-4138	Rep. Ch. 264, Sec. 10-102, L. 1963
1925, 1926	Rep. Ch. 89, Sec. 4, L. 1961	4208.1-4208.11	Rep. Ch. 55, Sec. 3, L. 1965
1937	Rep. Ch. 184, Sec. 8, L. 1961	4244	Rep. Ch. 160, Sec. 24, L. 1965
1939	Rep. Ch. 184, Sec. 8, L. 1961	4246	Rep. Ch. 160, Sec. 24, L. 1965
1949-1953	Rep. Ch. 280, Sec. 22, L. 1965	4258	Rep. Ch. 160, Sec. 24, L. 1965
1954	Rep. Ch. 280, Sec. 1, L. 1965	4273	Rep. Ch. 160, Sec. 24, L. 1965
1955	Rep. Ch. 280, Sec. 22, L. 1965	4448	S. M.R.Civ.P., Rule 4 D
1956	Rep. Ch. 280, Sec. 1, L. 1965	4562.1-4562.3	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
1957	Rep. Ch. 280, Sec. 1, L. 1965	4594	Rep. Ch. 136, Sec. 1, L. 1961
1958	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963	4813.2	Rep. Ch. 264, Sec. 10-102, L. 1963
1959	Rep. Ch. 280, Sec. 1, L. 1965	5148.1	Unconstitutional, 134 M 355, 332 P 2d 501
1960	Rep. Ch. 280, Sec. 22, L. 1965	5158.2	Rep. Ch. 147, Sec. 242, L. 1963
1961	Rep. Ch. 129, Sec. 1, L. 1963	5668.22, 5668.23	Rep. Ch. 147, Sec. 242, L. 1963
1962	Rep. Ch. 280, Sec. 22, L. 1965	5668.28	Rep. Ch. 147, Sec. 242, L. 1963
1963	Rep. Ch. 147, Sec. 242, L. 1963	5696	Rep. Ch. 232, Sec. 12, L. 1963
1964	Rep. Ch. 280, Sec. 22, L. 1965	5707	Rep. Ch. 232, Sec. 12, L. 1963
1966-1986	Rep. Ch. 280, Sec. 22, L. 1965	5711, 5712	Rep. Ch. 232, Sec. 12, L. 1963
1987	Rep. Ch. 147, Sec. 242, L. 1963	5715	Rep. Ch. 232, Sec. 12, L. 1963
1988	Rep. Ch. 280, Sec. 22, L. 1965	5731, 5732	Rep. Ch. 169, Sec. 4, L. 1963
1989	Rep. Ch. 147, Sec. 242, L. 1963	5856-5866	Rep. Ch. 199, Sec. 1, L. 1961
1990-1995	Rep. Ch. 280, Sec. 22, L. 1965	5954	Rep. Ch. 264, Sec. 10-102, L. 1963
2562-2577	Rep. Ch. 107, Sec. 18, L. 1965	5956	Rep. Ch. 264, Sec. 10-102, L. 1963
2589	Rep. Ch. 122, Sec. 12, L. 1965	6014.63	Rep. Ch. 129, Sec. 1, L. 1963
2739, 2740	Rep. Ch. 129, Sec. 1, L. 1963	6014.91, 6014.92	Rep. Ch. 264, Sec. 10-102, L. 1963
2815.77-2815.86	Rep. Ch. 154, Sec. 17, L. 1965	6014.100, 6014.101	Rep. Ch. 264, Sec. 10-102, L. 1963
2815.111	Rep. Ch. 154, Sec. 17, L. 1965	6014.127	Rep. Ch. 264, Sec. 10-102, L. 1963
2815.116	Rep. Ch. 154, Sec. 17, L. 1965	6109.12-6109.39	Rep. Ch. 236, Sec. 30, L. 1963
2815.119-2815.120	Rep. Ch. 154, Sec. 17 L. 1965	6155	Rep. Ch. 43, Sec. 4, L. 1959
2815.122	Rep. Ch. 154, Sec. 17, L. 1965	6535	Rep. Ch. 264, Sec. 10-102, L. 1963
2815.156	Rep. Ch. 147, Sec. 242, L. 1963	6537-6539	Rep. Ch. 264, Sec. 10-102, L. 1963
2821-2822	Rep. Ch. 177, Sec. 51, L. 1965	6721	Rep. Ch. 213, Sec. 3, L. 1959
2921	Rep. Ch. 197, Sec. 1, L. 1959	6734	Rep. Ch. 213, Sec. 3, L. 1959
2963	Rep. Ch. 147, Sec. 242, L. 1963	6736-6739	Rep. Ch. 213, Sec. 3, L. 1959
3228.10	Rep. Ch. 177, Sec. 51, L. 1965	6878-6880	Rep. Ch. 264, Sec. 10-102, L. 1963
3291	Rep. Ch. 147, Sec. 242, L. 1963	7591, 7592	Rep. Ch. 264, Sec. 10-102, L. 1963
3310	Rep. Ch. 177, Sec. 51, L. 1965	7594-7597	Rep. Ch. 264, Sec. 10-102, L. 1963
3357, 3358	Rep. Ch. 32, Sec. 1, L. 1953	7618	Rep. Ch. 264, Sec. 10-102, L. 1963
3359	Rep. Ch. 24, L. 1943; Ch. 32, Sec. 1, L. 1953	7622-7624	Rep. Ch. 264, Sec. 10-102, L. 1963
3360-3373	Rep. Ch. 32, Sec. 1, L. 1953	7633	Rep. Ch. 264, Sec. 10-102, L. 1963
3509	Rep. Ch. 188, Sec. 4, L. 1959	7828-7834	Rep. Ch. 264, Sec. 10-102, L. 1963
3525	Rep. Ch. 188, Sec. 4, L. 1959	7871-7873	Rep. Ch. 264, Sec. 10-102, L. 1963
3575.3	Rep. Ch. 147, Sec. 242, L. 1963	8210-8218	Rep. Ch. 264, Sec. 10-102, L. 1963
3592.17	Rep. Ch. 177, Sec. 51, L. 1965	8224	Rep. Ch. 264, Sec. 10-102, L. 1963
3634.1, 3634.2	Rep. Ch. 147, Sec. 242, L. 1963	8275-8285	Rep. Ch. 264, Sec. 10-102, L. 1963
3731, 3732	Rep. Ch. 38, Sec. 2, L. 1963		
3736	Rep. Ch. 38, Sec. 2, L. 1963		
3784	Rep. Ch. 129, Sec. 1 and Ch. 212, Sec. 3, L. 1963		
3786-3788	Rep. Ch. 129, Sec. 1, L. 1963		
3821	Rep. Ch. 199, Sec. 101, L. 1965		
3913.1, 3913.2	Rep. Ch. 153, Sec. 14, L. 1965		
3913.3	Rep. Ch. 174, Sec. 16, L. 1961		
4026-4050	Rep. Ch. 251, Sec. 28, L. 1961		
4053	Rep. Ch. 251, Sec. 28, L. 1961		
4056-4078	Rep. Ch. 250, Sec. 24, L. 1963		

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1921 & 1935	1947	1921 & 1935	1947
8289, 8290	Rep. Ch. 264, Sec. 10-102, L. 1963	9324	Rep. Ch. 13, Sec. 84, L. 1961
8290.1	Rep. Ch. 264, Sec. 10-102, L. 1963	9326-9328	Rep. Ch. 13, Sec. 84, L. 1961
8295	Rep. Ch. 264, Sec. 10-102, L. 1963	9330, 9331	Rep. Ch. 13, Sec. 84, L. 1961
8298	Rep. Ch. 264, Sec. 10-102, L. 1963	9345-9347	Rep. Ch. 13, Sec. 84, L. 1961
8306-8317	Rep. Ch. 264, Sec. 10-102, L. 1963	9359-9361	Rep. Ch. 13, Sec. 84, L. 1961
8381	Rep. Ch. 264, Sec. 10-102, L. 1963	9365	Rep. Ch. 13, Sec. 84, L. 1961
8393-8395	Rep. Ch. 32, Sec. 1, L. 1953	9367	Rep. Ch. 13, Sec. 84, L. 1961
8396-8400	Rep. Ch. 264, Sec. 10-102, L. 1963	9374-9376	Rep. Ch. 13, Sec. 84, L. 1961
8401-8493	Rep. Ch. 264, Sec. 10-102, L. 1963	9378-9380	Rep. Ch. 13, Sec. 84, L. 1961
8495-8597	Rep. Ch. 264, Sec. 10-102, L. 1963	9383-9385	Rep. Ch. 13, Sec. 84, L. 1961
8607-8611	Rep. Ch. 264, Sec. 10-102, L. 1963	9387	Rep. Ch. 13, Sec. 84, L. 1961
8674-8680	Rep. Ch. 264, Sec. 10-102, L. 1963	9399	Rep. Ch. 13, Sec. 84, L. 1961
8685	Rep. Ch. 200, Sec. 7, L. 1963	9403	Rep. Ch. 13, Sec. 84, L. 1961
8699, 8700	Rep. Ch. 264, Sec. 10-102, L. 1963	9405	Rep. Ch. 13, Sec. 84, L. 1961
8956, 8957	Rep. Ch. 147, Sec. 242, L. 1963	9482, 9483	Rep. Ch. 189, Sec. 2, L. 1963
8960	Rep. Ch. 147, Sec. 242, L. 1963	9485	Rep. Ch. 189, Sec. 2, L. 1963
9010	Rep. Ch. 13, Sec. 84, L. 1961	9735-9738	Rep. Ch. 13, Sec. 84, L. 1961
9065	Rep. Ch. 7, Sec. 1, L. 1963	9770-9772	Rep. Ch. 13, Sec. 84, L. 1961
9067	Rep. Ch. 13, Sec. 84, L. 1961	9774	Rep. Ch. 13, Sec. 84, L. 1961
9071	Rep. Ch. 13, Sec. 84, L. 1961	9778-9781	Rep. Ch. 13, Sec. 84, L. 1961
9077, 9078	Rep. Ch. 13, Sec. 84, L. 1961	9784	Rep. Ch. 13, Sec. 84, L. 1961
9080	Rep. Ch. 13, Sec. 84, L. 1961	9792	Rep. Ch. 13, Sec. 84, L. 1961
9082-9084	Rep. Ch. 13, Sec. 84, L. 1961	9820	Rep. Ch. 13, Sec. 84, L. 1961
9087, 9088	Rep. Ch. 13, Sec. 84, L. 1961	10620	Rep. Ch. 13, Sec. 84, L. 1961
9090	Rep. Ch. 13, Sec. 84, L. 1961	10622	Rep. Ch. 154, Sec. 1, L. 1959
9097	Rep. Ch. 13, Sec. 84, L. 1961	10643-10658	Rep. Ch. 13, Sec. 84, L. 1961
9105	Rep. Ch. 6, Sec. 1, L. 1963	10686-10692	Rep. Ch. 13, Sec. 84, L. 1961
9106	S. M.R.Civ.P., Rule 41(e)	10925	94-3920
9107	Rep. Ch. 13, Sec. 84, L. 1961	11180	Rep. Ch. 196, Sec. 15, L. 1965
9108	Rep. Ch. 5, Sec. 1 and Ch. 189, Sec. 2, L. 1963	11473	Rep. Ch. 174, Sec. 3, L. 1963
9110, 9111	Rep. Ch. 13, Sec. 84, L. 1961	11567	Rep. Ch. 52, Sec. 1, L. 1959
9112	S. M.R.Civ.P., Rule 4 D	11847	Rep. Ch. 172, Sec. 3, L. 1961
9113, 9114	Rep. Ch. 189, Sec. 2, L. 1963	12434-12438	Rep. Ch. 199, Sec. 101, L. 1965
9115, 9116	S. M.R.Civ.P., Rule 4 D	12439	Rep. Ch. 266, Sec. 82, L. 1963
9117-9119	Rep. Ch. 13, Sec. 84, L. 1961	12440-12442	Rep. Ch. 199, Sec. 101, L. 1965
9121, 9122	Rep. Ch. 13, Sec. 84, L. 1961	12443-12445	Rep. Ch. 266, Sec. 82, L. 1963
9123	Rep. Ch. 189, Sec. 2, L. 1963	12446-12447	Rep. Ch. 199, Sec. 101, L. 1965
9125-9138	Rep. Ch. 13, Sec. 84, L. 1961	12447.1-12447.10	Rep. Ch. 15, Sec. 1, L. 1959
9140, 9141	Rep. Ch. 13, Sec. 84, L. 1961	12447.11-12449	Rep. Ch. 199, Sec. 101, L. 1965
9144	Rep. Ch. 13, Sec. 84, L. 1961	12450	Rep. Ch. 15, Sec. 1, L. 1959
9146-9148	Rep. Ch. 13, Sec. 84, L. 1961	12451-12453	Rep. Ch. 266, Sec. 82, L. 1963
9151-9162	Rep. Ch. 13, Sec. 84, L. 1961	12454	Rep. Ch. 199, Sec. 101, L. 1965
9164-9166	Rep. Ch. 13, Sec. 84, L. 1961	12456	Rep. Ch. 199, Sec. 101, L. 1965
9169-9171	Rep. Ch. 13, Sec. 84, L. 1961	12458-12459	Rep. Ch. 199, Sec. 101, L. 1965
9174-9176	Rep. Ch. 13, Sec. 84, L. 1961	12460	Rep. Ch. 266, Sec. 82, L. 1963
9178-9187	Rep. Ch. 13, Sec. 84, L. 1961	12461-12462	Rep. Ch. 199, Sec. 101, L. 1965
9189	Rep. Ch. 13, Sec. 84, L. 1961	12463	Rep. Ch. 147, Sec. 242 and Ch. 266, Sec. 82, L. 1963
9191	Rep. Ch. 13, Sec. 84, L. 1961	12464	Rep. Ch. 199, Sec. 101, L. 1965
9239	Rep. Ch. 13, Sec. 84, L. 1961	12465	Rep. Ch. 266, Sec. 82, L. 1963
9292	Rep. Ch. 264, Sec. 10-102, L. 1963	12465.1-12465.8	Rep. Ch. 199, Sec. 101, L. 1965
9313	Rep. Ch. 13, Sec. 84, L. 1961	12488, 12489	Rep. Ch. 266, Sec. 82, L. 1963
9315-9317	Rep. Ch. 13, Sec. 84, L. 1961	12491-12493	Rep. Ch. 266, Sec. 82, L. 1963
9320-9322	Rep. Ch. 13, Sec. 84, L. 1961	12494	Rep. Ch. 199, Sec. 101, L. 1965
		12495	Rep. Ch. 266, Sec. 82, L. 1963

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1921 & 1935	1947	1921 & 1935	1947
12496	Rep. Ch. 199, Sec. 101, L. 1965	12522	Rep. Ch. 266, Sec. 82, L. 1963
12497	Rep. Ch. 266, Sec. 82, L. 1963	12524-12528	Rep. Ch. 266, Sec. 82, L. 1963
12499	Rep. Ch. 199, Sec. 101, L. 1965	12529	Rep. Ch. 199, Sec. 101, L. 1965
12500-12502	Rep. Ch. 266, Sec. 82, L. 1963	12530-12532	Rep. Ch. 266, Sec. 82, L. 1963
12503-12512	Rep. Ch. 199, Sec. 101, L. 1965	12533	Rep. Ch. 199, Sec. 101, L. 1965
12513-12515	Rep. Ch. 266, Sec. 82, L. 1963	12534	Rep. Ch. 266, Sec. 82, L. 1963
12519	Rep. Ch. 266, Sec. 82, L. 1963	12535-12545	Rep. Ch. 199, Sec. 101, L. 1965
12520-12521	Rep. Ch. 199, Sec. 101, L. 1965	12546	Rep. Ch. 266, Sec. 82, L. 1963
		12547-12552	Rep. Ch. 199, Sec. 101, L. 1965
		12572	Rep. Ch. 199, Sec. 101, L. 1965

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This table shows the disposition made of the sections of the Revised Codes of 1907 since publication of Replacement Volume 1.

1907	1947	1907	1947
61-64	Rep. Ch. 1, Sec. 4, L. 1965	1293	Rep. Ch. 199, Sec. 201, L. 1965
68, 69	Rep. Ch. 1, Sec. 4, L. 1965	1294	Rep. Ch. 266, Sec. 82, L. 1963
71-74	Rep. Ch. 1, Sec. 4, L. 1965	1298	Rep. Ch. 199, Sec. 101, L. 1965
76	Rep. Ch. 1, Sec. 4, L. 1965	1299-1301	Rep. Ch. 266, Sec. 82, L. 1963
79	Rep. Ch. 1, Sec. 4, L. 1965	1302	Rep. Ch. 199, Sec. 101, L. 1965
81	Rep. Ch. 1, Sec. 4, L. 1965	1305	Rep. Ch. 266, Sec. 82, L. 1963
158	Rep. Ch. 80, Sec. 14, L. 1961	1306	Rep. Ch. 190, Sec. 1, L. 1959
169	Rep. Ch. 177, Sec. 51, L. 1965	1308-1310	Rep. Ch. 190, Sec. 1, L. 1959
172	Rep. Ch. 147, Sec. 242, L. 1963	1797	Rep. Ch. 177, Sec. 51, L. 1965
180	Rep. Ch. 147, Sec. 242, L. 1963	2238-2242	Rep. Ch. 280, Sec. 22, L. 1965
189	Rep. Ch. 177, Sec. 51, L. 1965	2243	Rep. Ch. 280, Sec. 1, L. 1965
195	Rep. Ch. 177, Sec. 51, L. 1965	2244	Rep. Ch. 280, Sec. 22, L. 1965
196	Rep. Ch. 129, Sec. 1, L. 1963	2245	Rep. Ch. 280, Sec. 1, L. 1965
214	Rep. Ch. 129, Sec. 1, L. 1963	2246	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963
217	Rep. Ch. 177, Sec. 51, L. 1965	2247	Rep. Ch. 280, Sec. 1, L. 1965
232-235	Rep. Ch. 97, Sec. 32, L. 1961	2248	Rep. Ch. 280, Sec. 22, L. 1965
243	Rep. Ch. 97, Sec. 32, L. 1961	2249	Rep. Ch. 129, Sec. 1, L. 1963
245-247	Rep. Ch. 80, Sec. 14, L. 1961	2250	Rep. Ch. 280, Sec. 22, L. 1965
248	Rep. Ch. 271, Sec. 33, L. 1963	2251	Rep. Ch. 147, Sec. 242, L. 1963
249-253	Rep. Ch. 80, Sec. 14, L. 1961	2252	Rep. Ch. 280, Sec. 22, L. 1965
257-260	Rep. Ch. 80, Sec. 14, L. 1961	2255-2269	Rep. Ch. 280, Sec. 22, L. 1965
262, 263	Rep. Ch. 80, Sec. 14, L. 1961	2271-2276	Rep. Ch. 280, Sec. 22, L. 1965
265-267	Rep. Ch. 271, Sec. 33, L. 1963	2277	Rep. Ch. 147, Sec. 242, L. 1963
297	Rep. Ch. 129, Sec. 1, L. 1963	2278	Rep. Ch. 280, Sec. 22, L. 1965
305	Rep. Ch. 177, Sec. 51, L. 1965	2279	Rep. Ch. 147, Sec. 242, L. 1963
321	Rep. Ch. 264, Sec. 10-102, L. 1963	2280-2281	Rep. Ch. 280, Sec. 22, L. 1965
378-379	Rep. Ch. 177, Sec. 51, L. 1965	2877	S. M.R.Civ.P., Rule 4 D
443-445	Rep. Ch. 80, Sec. 14, L. 1961	3608	Rep. Ch. 232, Sec. 12, L. 1963
946	Rep. Ch. 26, Sec. 1, L. 1961	3614	Rep. Ch. 232, Sec. 12, L. 1963
948-951	Rep. Ch. 26, Sec. 1, L. 1961	3618, 3619	Rep. Ch. 232, Sec. 12, L. 1963
1113	Rep. Ch. 266, Sec. 82, L. 1963	3622	Rep. Ch. 232, Sec. 12, L. 1963
1132	Rep. Ch. 198, Sec. 2 and Ch. 213, Sec. 9, L. 1963	3638, 3639	Rep. Ch. 169, Sec. 4, L. 1963
1147	Rep. Ch. 213, Sec. 9, L. 1963	3761-3771	Rep. Ch. 199, Sec. 1, L. 1961
1249-1250	Rep. Ch. 199, Sec. 101, L. 1965	3855	Rep. Ch. 264, Sec. 10-102, L. 1963
1259	Rep. Ch. 199, Sec. 101, L. 1965	3857	Rep. Ch. 264, Sec. 10-102, L. 1963
1260, 1261	Rep. Ch. 266, Sec. 82, L. 1963	4069	Rep. Ch. 43, Sec. 4, L. 1959
1265	Rep. Ch. 266, Sec. 82, L. 1963	4303	Rep. Ch. 264, Sec. 10-102, L. 1963
1267	Rep. Ch. 266, Sec. 82, L. 1963	4305-4307	Rep. Ch. 264, Sec. 10-102, L. 1963
1270	Rep. Ch. 266, Sec. 82, L. 1963	4368	Rep. Ch. 129, Sec. 1 and Ch. 212, Sec. 3, L. 1963
1273	Rep. Ch. 266, Sec. 82, L. 1963	4479	Rep. Ch. 213, Sec. 3, L. 1959
1277-1280	Rep. Ch. 199, Sec. 101, L. 1965	4492	Rep. Ch. 213, Sec. 3, L. 1959
1281	Rep. Ch. 266, Sec. 82, L. 1963	4494-4497	Rep. Ch. 213, Sec. 3, L. 1959
1282-1283	Rep. Ch. 199, Sec. 101, L. 1965	4631-4633	Rep. Ch. 264, Sec. 10-102, L. 1963
1284-1287	Rep. Ch. 266, Sec. 82, L. 1963	5089, 5090	Rep. Ch. 264, Sec. 10-102, L. 1963
1288	Rep. Ch. 199, Sec. 101, L. 1965		
1289	Rep. Ch. 266, Sec. 82, L. 1963		
1290-1291	Rep. Ch. 199, Sec. 101, L. 1965		
1292	Rep. Ch. 266, Sec. 82, L. 1963		

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1907	1947	1907	1947
5092-5094a	Rep. Ch. 264, Sec. 10-102, L. 1963	6641	Rep. Ch. 13, Sec. 84, L. 1961
5115	Rep. Ch. 264, Sec. 10-102, L. 1963	6690	Rep. Ch. 264, Sec. 10-102, L. 1963
5119-5121	Rep. Ch. 264, Sec. 10-102, L. 1963	6710	Rep. Ch. 13, Sec. 84, L. 1961
5130	Rep. Ch. 264, Sec. 10-102, L. 1963	6712-6714	Rep. Ch. 13, Sec. 84, L. 1961
5314-5320	Rep. Ch. 264, Sec. 10-102, L. 1963	6717-6719	Rep. Ch. 13, Sec. 84, L. 1961
5357-5359	Rep. Ch. 264, Sec. 10-102, L. 1963	6721	Rep. Ch. 13, Sec. 84, L. 1961
5695-5703	Rep. Ch. 264, Sec. 10-102, L. 1963	6723-6725	Rep. Ch. 13, Sec. 84, L. 1961
5709	Rep. Ch. 264, Sec. 10-102, L. 1963	6727, 6728	Rep. Ch. 13, Sec. 84, L. 1961
5777	Rep. Ch. 264, Sec. 10-102, L. 1963	6742-6744	Rep. Ch. 13, Sec. 84, L. 1961
5780	Rep. Ch. 264, Sec. 10-102, L. 1963	6756-6758	Rep. Ch. 13, Sec. 84, L. 1961
5788-5799	Rep. Ch. 264, Sec. 10-102, L. 1963	6762	Rep. Ch. 13, Sec. 84, L. 1961
5803	Rep. Ch. 264, Sec. 10-102, L. 1963	6764	Rep. Ch. 13, Sec. 84, L. 1961
5813-5815	Rep. Ch. 32, Sec. 1, L. 1953	6771-6773	Rep. Ch. 13, Sec. 84, L. 1961
5837-5934	Rep. Ch. 264, Sec. 10-102, L. 1963	6775-6777	Rep. Ch. 13, Sec. 84, L. 1961
5936-6037a	Rep. Ch. 264, Sec. 10-102, L. 1963	6780-6782	Rep. Ch. 13, Sec. 84, L. 1961
6056-6062	Rep. Ch. 264, Sec. 10-102, L. 1963	6784	Rep. Ch. 13, Sec. 84, L. 1961
6067	Rep. Ch. 200, Sec. 7, L. 1963	6796	Rep. Ch. 13, Sec. 84, L. 1961
6081, 6082	Rep. Ch. 264, Sec. 10-102, L. 1963	6800	Rep. Ch. 13, Sec. 84, L. 1961
6131-6135	Rep. Ch. 264, Sec. 10-102, L. 1963	6802	Rep. Ch. 13, Sec. 84, L. 1961
6427	Rep. Ch. 13, Sec. 84, L. 1961	7102-7105	Rep. Ch. 13, Sec. 84, L. 1961
6475	Rep. Ch. 7, Sec. 1, L. 1963	7137-7139	Rep. Ch. 13, Sec. 84, L. 1961
6477	Rep. Ch. 13, Sec. 84, L. 1961	7141	Rep. Ch. 13, Sec. 84, L. 1961
6481	Rep. Ch. 13, Sec. 84, L. 1961	7145-7148	Rep. Ch. 13, Sec. 84, L. 1961
6487, 6488	Rep. Ch. 13, Sec. 84, L. 1961	7151	Rep. Ch. 13, Sec. 84, L. 1961
6490-6492	Rep. Ch. 13, Sec. 84, L. 1961	7159	Rep. Ch. 13, Sec. 84, L. 1961
6495-6496	Rep. Ch. 13, Sec. 84, L. 1961	7187	Rep. Ch. 13, Sec. 84, L. 1961
6498	Rep. Ch. 13, Sec. 84, L. 1961	7976	Rep. Ch. 13, Sec. 84, L. 1961
6505	Rep. Ch. 13, Sec. 84, L. 1961	7978	Rep. Ch. 154, Sec. 1, L. 1959
6513	Rep. Ch. 6, Sec. 1, L. 1963	7999-8014	Rep. Ch. 13, Sec. 84, L. 1961
6514	S. M.R.Civ.P., Rule 41(e)	8042-8048	Rep. Ch. 13, Sec. 84, L. 1961
6515	Rep. Ch. 13, Sec. 84, L. 1961	8745	Rep. Ch. 174, Sec. 3, L. 1963
6516	Rep. Ch. 5, Sec. 1 and Ch. 189, Sec. 2, L. 1963	8881	Rep. Ch. 52, Sec. 1, L. 1959
6518-6522	Rep. Ch. 13, Sec. 84, L. 1961	9151	Rep. Ch. 172, Sec. 3, L. 1961
6524, 6525	Rep. Ch. 13, Sec. 84, L. 1961	9716-9720	Rep. Ch. 199, Sec. 101, L. 1965
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171	1	Rep. Ch. 38, Sec. 2, L. 1963	92	1	Rep. Ch. 13, Sec. 84, L. 1961
180	1	Rep. Ch. 13, Sec. 84, L. 1961	96	1	Rep. Ch. 199, Sec. 101, L. 1965
182	13	Rep. Ch. 147, Sec. 242, L. 1963	102	1	Rep. Ch. 38, Sec. 2, L. 1963
183	1	Rep. Ch. 266, Sec. 82, L. 1963	111	3	Rep. Ch. 80, Sec. 14, L. 1961
	2	Rep. Ch. 199, Sec. 101, L. 1965		4	Rep. Ch. 177, Sec. 51, L. 1965
	3	Rep. Ch. 266, Sec. 82, L. 1963	119	1-5	Rep. Ch. 107, Sec. 18, L. 1965
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	8-9	Rep. Ch. 213, Sec. 9, L. 1963	147	1-19	Rep. Ch. 264, Sec. 10-102, L. 1963
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	12	Rep. Ch. 213, Sec. 9, L. 1963	171	9	Unconstitutional, 138 M 69, 354 P 2d 1056
	13-16	Rep. Ch. 199, Sec. 101, L. 1965	181	1	Rep. Ch. 199, Sec. 1, L. 1961
	17-18	Rep. Ch. 266, Sec. 82, L. 1963	197	1	Rep. Ch. 184, Sec. 8, L. 1961
184	10-11	Rep. Ch. 147, Sec. 242, L. 1963	198	1	Rep. Ch. 266, Sec. 82, L. 1963
	13	Rep. Ch. 147, Sec. 242, L. 1963		3-6	Rep. Ch. 266, Sec. 82, L. 1963
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53	1-2	Rep. Ch. 264, Sec. 10-102, L. 1963	Ch.	Sec.	Herein
59	1-10	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	20	1	Rep. Ch. 272, Sec. 2, L. 1959
62	1	Rep. Ch. 199, Sec. 101, L. 1965	30	1	Rep. Ch. 3, Sec. 3, L. 1965
68	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	66	1	Rep. Ch. 189, Sec. 2, L. 1963
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75	Preamble, 1-2	Rep. Ch. 47, Sec. 14, L. 1963	84	1	Rep. Ch. 13, Sec. 84, L. 1961
76	1-2	Rep. Ch. 266, Sec. 82, L. 1963		2-3	Rep. Ch. 199, Sec. 101, L. 1965
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192	1-6	Rep. Ch. 162, Sec. 17, L. 1965	142	7	Rep. Ch. 187, Sec. 2, L. 1959
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214	1	Rep. Ch. 199, Sec. 101, L. 1965	153	7	Rep. Ch. 147, Sec. 242, L. 1963
217	1	Rep. Ch. 218, Sec. 4, L. 1957	180	1	Rep. Ch. 199, Sec. 1, L. 1961
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127	1-3	Rep. Ch. 127, Sec. 15, L. 1963	142	1	Rep. Ch. 189, Sec. 2, L. 1959
129	1	Rep. Ch. 55, Sec. 3, L. 1965	150	1	Rep. Ch. 250, Sec. 24, L. 1963
130	1	Rep. Ch. 160, Sec. 24, L. 1965	151	1	Rep. Ch. 189, Sec. 2, L. 1963
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168	1-5	Rep. Ch. 232, Sec. 9, L. 1961	165	1	Rep. Ch. 147, Sec. 242, L. 1963
194	5	Rep. Ch. 81, Sec. 3, L. 1961	166	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
	7-10	Rep. Ch. 158, Sec. 2, L. 1959	173	1	Rep. Ch. 274, Sec. 20, L. 1965
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117	1	Rep. Ch. 199, Sec. 101, L. 1965	279	1-7	Rep. Ch. 271, Sec. 33, L. 1963
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133	1	Rep. Ch. 266, Sec. 82, L. 1963	15	1	Rep. Ch. 285, Sec. 20, L. 1959
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33	1	Rep. Ch. 55, Sec. 3, L. 1965		2	Repealing Clause
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REVISED CODES OF MONTANA

VOLUME 1

Part 2

1965 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 1 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1
(PART 2) THROUGH VOLUME 397, PACIFIC
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A 1965 EDITION OF THE CODES OF MONTANA

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The powers of the state aeronautics commission include the power to purchase

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CHAPTER 2—STATE AERONAUTICS COMMISSION

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Expert Witness

An officer and employee of the state aeronautical commission may not be required to testify as an expert witness in any suit, action, or proceeding involving any aircraft. McCutcheon v. Larsen, 134 M 511, 333 P 2d 1013, 1015, 74 ALR 2d 622.

Purchase of Aircraft

The commission is empowered to purchase aircraft, the expense of which is to be paid out of the state aviation fund as an expense of administration. Holtz v. Babcock, 143 M 341, 389 P 2d 869.

CHAPTER 5—MISCELLANEOUS

Section 1-501. Receipt and disbursement of moneys.

1-501. Receipt and disbursement of moneys. All costs and expenses of administering this act, including the salaries of employees and assistants provided for in section 1-203, the expenses of members of the commission, and all other disbursements necessary to carry out the purposes of this act, shall be paid out of the following revenues to-wit: All gifts and all legislative appropriations to the commission; all moneys received from any branch or department of the federal government, or from other sources, for the purposes mentioned in this act or for the furtherance of aeronautics generally in this state. All such moneys shall be deposited in the state treasury to the credit of the commission.

There shall be deposited in the earmarked revenue fund to the credit of the commission the proceeds of one cent (1¢) per gallon out of the amount per gallon of gasoline license tax now or hereafter imposed by the laws of Montana upon purchases of gasoline used for the operation of aircraft.

No part of said one cent (1¢) per gallon of gasoline license tax imposed by the laws of Montana on gasoline purchased and used for the operation of aeroplanes or aircraft, shall be subject to refund under the provisions of section 84-1818, as amended, it being the intent of this section to reduce by one cent (1¢) per gallon of the amount of gasoline license tax which may be refunded on purchases of gasoline used in the operation of aircraft, and to leave otherwise unchanged the provisions of said section 84-1818.

History: En. Sec. 20, Ch. 152, L. 1945; amd. Sec. 1, Ch. 120, L. 1949; amd. Sec. 220, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the first two paragraphs for four former paragraphs, for text of which see parent volume.

Purchase of Aircraft

The commission is empowered to purchase aircraft, the expense of which is to be paid out of the aviation fund as an expense of administration. *Holtz v. Babcock*, 143 M 341, 389 P 2d 869.

1-502. Aeronautics functions governmental—no liability for torts.

Airport Manager as Agent of Municipality

Where city and county leased hangar facilities and designated one of two lessees as airport manager, and the lessees were obligated to maintain only the portion of the airport leased to them, the city and county having retained control over the unleased portions, the airport manager was the agent of the city and county and was not liable for an accident occurring on unleased portion. *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

Immunity from Suit

A municipality is immune from suit for injuries resulting from the maintenance or operation of an airport. *Holland v. West-*

ern Airlines, Inc., 154 F Supp 457, 459; *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

Liability Insurance

The fact that the city had obtained a policy of liability insurance did not in itself result in any waiver of sovereign immunity from liability for personal injuries sustained by plaintiff when she slipped and fell on floor of municipal airport owned by the city and leased to defendant airline. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 461.

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

CHAPTER 6—UNIFORM STATE LAW FOR AERONAUTICS

Section 1-603. Lawfulness of flight—landings—recovery of damages.

1-603. (2736.7) Lawfulness of flight—landings—recovery of damages. Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water, or in violation of the air commerce regulations which have been, or may hereafter be, promulgated by the department of commerce of the United States. No person shall operate an aircraft, as pilot thereof, either in the air or on the ground in a careless or reckless manner so as to endanger the life or property of

others, including the aircraft being operated and passengers carried therein. The wilful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them, shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties, provided by this act, may be recovered in an action for damages caused therefrom.

The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the pilot shall be liable for actual damage caused by such forced landing.

History: En. Sec. 7, Ch. 17, L. 1929; amd. Sec. 1, Ch. 109, L. 1939; amd. Sec. 1, Ch. 16, L. 1949; amd. Sec. 1, Ch. 102, L. 1963.

Amendment

The 1963 amendment inserted "as pilot thereof, either in the air or on the ground" near the beginning of the second sentence of the first paragraph.

CHAPTER 8—ESTABLISHMENT OF AIRPORTS BY COUNTIES AND CITIES—MUNICIPAL AIRPORTS ACT

Section 1-801. Counties, cities and towns may acquire land for, and establish airports and landing fields.

1-802. Land when deemed acquired for public use—exercise power of eminent domain.

1-803. Creation of board to govern airport—fees—fund for maintenance—rules and regulations.

1-801. (5668.35) Counties, cities and towns may acquire land for, and establish airports and landing fields. Counties, cities and towns in this state, may either individually or by the joint action of a county and one (1) or more of the cities and towns within its border acquire by gift, deed, purchase or condemnation, land for airport or landing field purposes and thereon establish, construct, own, control, lease, equip, improve, operate, and regulate airports or landing fields for the use of airplanes and other aircraft, and may use for such purpose or purposes any property suitable therefor that now or may at any time hereafter be acquired, owned or controlled by such county, city or town.

In addition, a county, city or town may do the acts authorized by this section by acting jointly with one or more counties, with one or more cities, with one or more towns or any combination of such counties, cities or towns. Such airport need not be located within the limits of each subdivision participating in the joint venture, in whole or in part.

History: En. Sec. 1, Ch. 108, L. 1929; amd. Sec. 1, Ch. 54, L. 1941; amd. Sec. 1, Ch. 88, L. 1961.

Amendment

The 1961 amendment added the second paragraph.

1-802. (5668.36) Land when deemed acquired for public use—exercise power of eminent domain. Any lands acquired, owned, controlled or occupied by any county, city or town, individually or pursuant to joint action as herein provided for the purposes enumerated in section 1-801, shall and are hereby declared to be acquired, owned, controlled and occupied for a public use, and as a matter of public necessity, and such counties, cities and

towns, whether acting individually or jointly shall have the right to acquire property for such purposes under the power of eminent domain as and for a public use or necessity.

History: En. Sec. 2, Ch. 108, L. 1929; amd. Sec. 2, Ch. 54, L. 1941; amd. Sec. 2, Ch. 88, L. 1961.

Amendment

The 1961 amendment after the words "county, city or town" inserted the words "individually or" and deleted the words "or by a county and city or cities, or town or towns."

1-803. (5668.37) Creation of board to govern airport—fees—fund for maintenance—rules and regulations. The county, city or town, acting individually or acting jointly as herein authorized by section 1-801, having established an airport or landing field and acquired property for such purpose, may construct, improve, equip, maintain, and operate the same, and for that purpose may create a board or body from the inhabitants of such county, city or town, or such joint subdivisions of the state for the purpose of conferring upon them and may confer upon them the jurisdiction for the improvement, equipment, maintenance and operation of such airport or landing field. The board of county commissioners, the city or town council, as the case may be, or the board of county commissioners and the council or councils under a joint venture may adopt rules and establish fees or charges for the use of such airport or landing field, or may authorize such board or body to do so, subject, however, to the approval of the appointing power before the same shall take effect. All expenses of such construction, improvement, equipment, maintenance and operation shall be a charge against such county, city or town, or, when a county, city or town acts jointly under the authority herein given, such charges shall be against the joint subdivisions of the state, and shall be apportioned according to benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution of the governing bodies.

For the purpose of meeting the charges hereinbefore mentioned when the airport or landing field is such joint venture, a joint fund shall be created and maintained into which each of the political subdivisions interested shall deposit its proportionate share in accordance with the predetermination of the board of county commissioners and council, or councils, affected.

All disbursements from such fund shall be made by order of such joint board or body, if one be created as hereinabove authorized, otherwise under such rules and regulations as the joint control by the commissioners and council or councils may adopt.

History: En. Sec. 3, Ch. 108, L. 1929; amd. Sec. 3, Ch. 54, L. 1941; amd. Sec. 3, Ch. 88, L. 1961.

Amendment

The 1961 amendment substituted the words "acting individually or" for "or the county and any city or cities, town or towns" near the beginning of the section;

inserted "by section 1-801" after "herein authorized" in the first sentence of the first paragraph; substituted "county, city or town" for "county and city or cities, town or towns" the second place that phrase appears in the third sentence of the first paragraph; and deleted "two (2)" before "governing bodies" at the end of the first paragraph.

1-812. Operation and use privileges.**Airport Manager as Agent**

Where in a lease of hangar facilities at a city and county airport, the parties named one of the lessees as airport manager, it was apparent that the parties had

this section in mind and the use of the word "manager" implied that he was to be the agent of the airport commission. *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

1-821. Joint operations.**References**

Cited in *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

1-822. Public purpose, county and municipal purpose.**Immunity from Suit**

A municipality is immune from suit for injuries resulting from the maintenance or operation of an airport. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 459; *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819.

Liability Insurance

The fact that the city had obtained a policy of liability insurance did not in itself result in any waiver of sovereign immunity from liability for personal injuries sustained by plaintiff when she slipped and fell on floor of municipal airport owned by the city and leased to defendant airline. *Holland v. Western Airlines, Inc.*, 154 F Supp 457, 461.

TITLE 2—AGENCY

CHAPTER 1—DEFINITION OF AGENCY—AUTHORITY OF AGENTS

2-101. (7928) Agency defined.

References

Hamilton v. Lion Head Ski Lift, Inc.,
139 M 335, 363 P 2d 716, 719.

2-104. (7931) Agency, actual or ostensible.

References

Hamilton v. Lion Head Ski Lift, Inc.,
139 M 335, 363 P 2d 716, 718.

2-106. (7933) Ostensible agency.

Acquiescence in Agency

Where a hotel company had acted as a ski lift company's agent in managing the latter's business, and where the hotel company's principal stockholder had later taken possession of and controlled the ski lift company's office and principal place of business for two years, the principal stockholder was the agent of the ski lift company in negotiating an employment contract, and this was further confirmed when the stockholder engaged counsel to defend the ski lift company in the instant litigation. Hamilton v. Lion Head

Ski Lift, Inc., 139 M 335, 363 P 2d 716, 719.

Acts and Statements Establishing Agency

Where a husband signed a letter employing an attorney and where his wife conferred with the attorney several times and approved his actions with the husband's knowledge and without his expressed disapproval, and where the husband claimed the benefits of the attorney's actions, the wife was the ostensible agent of the husband. Purcell v. Gibbs, 133 M 481, 326 P 2d 679.

2-114. (7937) Creation of agency.

References

Hamilton v. Lion Head Ski Lift, Inc.,
139 M 335, 363 P 2d 716, 718.

2-118. (7941) Ratification of part of a transaction.

Operation and Effect

Where a landowner claimed the benefit of an attorney's action in clearing title by paying part of a tax claim as part of a settlement, the landowner ratified other

stipulations entered into by the attorney as a part of the same settlement and embodied in the same decree. Purcell v. Gibbs, 133 M 481, 326 P 2d 679.

2-122. (7945) Measure of agent's authority.

Conduct of Business

Employee of used car dealer who had been left on the sales lot with the authority to show, demonstrate, quote prices and make trade-in deals, was clothed with sufficient power to conduct the business,

in the absence of his employer, and was agent of the employer in dealing with the public and promoting sale of used cars on the sales lot of his employer. White v. Sorenson, 141 M 318, 377 P 2d 364, 366.

2-123. (7946) Actual authority defined.

References

Cited in White v. Sorenson, 141 M 318, 377 P 2d 364, 366.

2-124. (7447) Ostensible authority defined.

Permissive Use of Vehicle by Employee

The mere permissive use by a truck driver of his employer's truck for personal purposes did not make the owner of the truck liable for the driver's negligence under the doctrine of ostensible

authority. *Searle v. Great Northern Ry. Co.*, 189 F Supp 423, 428.

References

Cited in *White v. Sorenson*, 141 M 318, 377 P 2d 364, 366.

CHAPTER 2—MUTUAL OBLIGATIONS BETWEEN PRINCIPALS, AGENTS AND THIRD PERSONS

2-205. (7961) For acts done under a mere ostensible authority.

Permissive Use of Vehicle by Employee

The mere permissive use by a truck driver of his employer's truck for personal purposes did not make the owner

of the truck liable for the driver's negligence under the doctrine of ostensible authority. *Searle v. Great Northern Ry. Co.*, 189 F Supp 423, 428.

2-206. (7962) When exclusive credit is given to agent.

Mechanic's Lien

Even assuming that a contractor making real estate improvements was acting as the agent of the property owner in purchasing material for the improvement, this section does not apply so as to re-

quire any notice from the materialman to the property owner, other than that required by the mechanic's lien law, to perfect a materialman's lien. *Monarch Lumber Co. v. Haggard*, 139 M 105, 360 P 2d 794.

2-212. (7968) Agent's responsibility to third persons.

Operation and Effect

Where seller at auction sale required assurances from principal before it would accept the agent's drafts on principal in payment for cattle purchased, the seller could not hold the agent personally liable

on the contract even though it permitted the agent to bid in at the auction without disclosing his principal. *Yellowstone Livestock Comm. v. Dupuis*, 133 M 454, 325 P 2d 691.

TITLE 3—AGRICULTURE, HORTICULTURE AND DAIRYING

- Chapter 1. Department and commissioner of agriculture—creation and general powers, 3-103, 3-107, 3-110.1.
2. Grain standards—storage and inspection—regulation of grain warehousemen, 3-201, 3-202, 3-205, 3-226 to 3-228, 3-233.
 4. Farm storage of grain as basis for farm credit—inspection and certification, 3-408, 3-420.
 5. Protein testing of grain, 3-510.
 6. Farm storage public warehousemen, 3-602.
 7. Bean warehousemen, 3-704.
 8. Agricultural seeds, 3-802, 3-816 to 3-819.
 9. Sealers of grain, 3-904.
 11. Horticulture—control of fruit pests and diseases, 3-1103.
 12. Nurseries and nurserymen—license and regulation, 3-1212.
 14. Standard grades and brands for Montana farm products, 3-1404.
 15. Miscellaneous powers and duties of department of agriculture, 3-1510 to 3-1515.
 17. Commercial fertilizer—regulation of sale, 3-1714 to 3-1717, 3-1723, 3-1724, 3-1727.
 18. Hay dealers—bond and license, Repealed—Section 1, Chapter 81, Laws of 1959.
 19. Mustard seed—grade requirements—purchaser's bond and license, 3-1906, 3-1910.
 20. Commercial feeds—regulation, 3-2012 to 3-2024.
 22. Poultry improvement, 3-2201 to 3-2205, 3-2207, 3-2209, 3-2211, 3-2212.
 23. Eggs and egg dealers—license, 3-2301, 3-2302, 3-2312, 3-2313, 3-2315.
 24. Dairies and dairy products—regulations of productions and sale, 3-2407, 3-2410, 3-2411, 3-2417, 3-2466, 3-2476.
 25. Montana quality label—use on inspected agricultural and food products, 3-2503.
 27. Control of noxious rodent pests, 3-2704.
 28. Rural rehabilitation, 3-2803.

CHAPTER 1—DEPARTMENT AND COMMISSIONER OF AGRICULTURE— CREATION AND GENERAL POWERS

- Section 3-103. Salary, and office of commissioner.
- 3-107. Powers and duties of department.
- 3-110.1 Production of fur-bearing animals defined as agricultural pursuit.

3-103. (3557) Salary, and office of commissioner. Before entering upon the duties of his office, the commissioner of agriculture shall take and subscribe the constitutional oath of office. The commissioner shall receive an annual salary of not more than ten thousand dollars (\$10,000.00), payable in the same manner as the salaries of other state officers, and shall be allowed such expenses as may be actually and necessarily incurred in the performance of his duties. He shall maintain his office at the state capitol.

History: En. Sec. 3, Ch. 216, L. 1921; re-en. Sec. 3557, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1953; amd. Sec. 1, Ch. 225, L. 1963; amd. Sec. 9, Ch. 177, L. 1965.

Amendments

The 1963 amendment substituted the provision for a maximum salary of \$10,-

000 for a provision fixing the salary at \$7,000.

The 1965 amendment deleted from the end of the first sentence a clause reading, "and shall give a surety company bond in the sum of seven thousand dollars (\$7,000.00), conditioned for the faithful performance of his duties, the cost of said bond to be paid by the state."

3-107. (3561) Powers and duties of department. The department of agriculture shall have power and it shall be its duty:

1 to 13. * * * [Subdivisions 1 to 13, same as parent volume.]

14. To contract in respect to any matter within the scope of its authority.

History: En. Sec. 7, Ch. 216, L. 1921; re-en. Sec. 3561, R. C. M. 1921; amd. Sec. 13, Ch. 80, L. 1961.

Amendment

The 1961 amendment deleted the words "labor, and industry" in the name of the department and in subd. 14 after the word "contract" deleted the words "with the approval of the state board of examiners."

Repealing Clauses

Section 14 of Ch. 80, Laws 1961 read "Sections 82-1122, 82-1123, 82-1124, 82-1126, 82-1127, 82-1128, 82-1129, 82-1130, 82-1140, 82-1141, 82-1142, 82-1143, 82-1145, 82-1146, 82-1148, 59-702, 59-703, 59-704, 77-1003 and 82-2205, Revised Codes of Montana, 1947 are repealed."

Section 15 of Ch. 80, Laws 1961 repealed all acts or parts of acts in conflict therewith.

3-110.1. Production of fur-bearing animals defined as agricultural pursuit. (1) The following are agricultural pursuits:

(a) The breeding, raising and producing in captivity of all fur-bearing animals.

(b) The marketing by the producer of these animals as live animals or as pelts.

(2) Such animals or pelts are agricultural products and any person engaged in the producing or marketing of such products is a farmer engaged in an agricultural pursuit, as generally expressed in Title 3, R. C. M. 1947.

(3) This act is not intended to alter the powers or duties of the state fish and game commission with respect to fur-bearing animals under existing statutes.

History: En. Sec. 1, Ch. 25, L. 1965.

Title of Act

An act declaring the raising of fur-

bearing animals in captivity to be an agricultural pursuit without altering the powers or duties of the state fish and game commission under existing statutes.

CHAPTER 2—GRAIN STANDARDS—STORAGE AND INSPECTION—REGULATION OF GRAIN WAREHOUSEMEN

Section 3-201. Definitions.

3-202. Fees to be paid to state sealer of weights and measures.

3-205. Inspectors of grain—samplers and weighers—qualifications—interest.

3-226. Possession by warehouseman considered bailment, when—prior right of warehouse receipt holder to grain.

3-227. Annual report of warehouseman, track buyer and grain dealer—special reports—penalty for failure to report.

3-228. Bond—license and fees of warehouseman, track buyer, grain dealer and others—penalty for operating without a license.

3-233. Fees—disposition.

3-201. (3574) Definitions. Whenever the word "grain" is mentioned in this act, it shall be construed to include flax. The term "public warehouse" includes any elevator, mill, warehouse, or structure in which grain is received from the public for storage, milling, shipment or handling. The term "public warehouseman" shall be held to mean and include every person, association, firm and corporation owning, controlling, or operating any public warehouse in which grain is stored or handled in such a man-

ner that the grain of various owners is mixed together, and the identity of the different lots or parcels is not preserved. The term "grain dealer" shall be held to mean and include every person, firm, association and corporation owning, controlling, or operating a truck, tractor-trailer unit, or warehouse, other than a public warehouse, and engaged in the business of buying grain for shipment or milling. The term "track buyer" shall mean and include every person, firm, association, and corporation who engages in the business of buying grain for shipment or milling, and who does not own, control, or operate a warehouse or public warehouse. The terms "agent," "broker," and "commission man" shall mean and include every person, association, firm and corporation who engages in the business of negotiating sales or contracts for grain or of making sales or purchases for a commission.

History: En. Sec. 20, Ch. 216, L. 1921; re-en. Sec. 3574, R. C. M. 1921; amd. Sec. 1, Ch. 41, L. 1923; amd. Sec. 1, Ch. 154, L. 1929; amd. Sec. 1, Ch. 35, L. 1933; amd. Sec. 1, Ch. 224, L. 1961.

Amendment

The 1961 amendment inserted the words "truck, tractor-trailer unit, or" in the sentence defining "grain dealer."

3-202. (3575.2) Fees to be paid to state sealer of weights and measures. It shall be the duty of each person, firm, co-partnership, or corporation owning or in possession of a scale or scales to pay to the state sealer of weights and measures or his deputies at the time of each inspection of such scale or scales, the following inspection fees: For each railroad track scale the sum of fifteen (\$15.00) dollars; grain shipping hopper scale with a capacity of forty thousand (40,000) pounds or over, twenty-five (\$25.00) dollars; automatic or hopper shipping scale up to and including ten (10) ton capacity, eight (\$8.00) dollars; wagon scale, truck scale, coal scale, dump scale, beet scale, and stock scale, up to and including ten (10) ton capacity, ten (\$10.00) dollars, over ten (10) ton up to and including twenty (20) ton capacity, twelve (\$12.00) dollars, two-section scale with a capacity over twenty (20) ton, twenty (\$20.00) dollars; three (3) or more section twenty (20) ton and over capacity, twenty-five (\$25.00) dollars; for each dormant platform scale up to thirty-five hundred (3500) pounds, meat track scale and dial scale with a capacity of five hundred (500) pounds to one thousand (1,000) pounds, two (\$2.00) dollars; built-in warehouse scales with a capacity from thirty-five hundred (3500) pounds to ten thousand (10,000) pounds capacity, five (\$5.00) dollars each portable scale, hanging scale and commercial person weighing scale, two (\$2.00) dollars; grain testers and other small scales used for weighing and testing grain in grain elevators, or warehouses, fifty (50¢) cents; all counter scales with a capacity of one (1) to ten (10) pounds, fifty (50¢) cents; all counter scales with a capacity of over ten (10) pounds, one dollar and twenty-five cents (\$1.25).

Where fees are not paid within thirty (30) days after inspection, there shall be an added charge of fifty per cent (50%) of the inspection fee and the equipment will be sealed and removed from service by the sealer of weights and measures or his deputies, until such fees have been paid.

Anyone found using a weighing device or petroleum measuring device or removing the said seal before all inspection fees have been paid, shall

upon conviction, be deemed guilty of a misdemeanor and shall be subject to a fine of not less than ten (\$10.00) dollars nor more than one hundred (\$100.00) dollars.

The sealer of weights and measures, shall by proper regulation, fix inspection fees for any scales, weights, measures, weighing and computing devices and for special services not covered by the foregoing schedule of fees.

History: En. Sec. 2, Ch. 124, L. 1927; amd. Sec. 2, Ch. 31, L. 1933; amd. Sec. 2, Ch. 146, L. 1939; amd. Sec. 1, Ch. 109, L. 1945; amd. Sec. 1, Ch. 163, L. 1947; amd. Sec. 1, Ch. 89, L. 1953; amd. Sec. 1, Ch. 85, L. 1957; amd. Sec. 1, Ch. 145, L. 1961.

Amendment

The 1961 amendment inserted the clause "automatic or hopper shipping scale up to and including ten (10) ton capacity, eight (\$8.00) dollars" in the first paragraph; after the words "coal scale, dump scale," deleted the words "automatic or hopper

shipping scale,"; and increased the fee for wagon scales etc. of up to ten tons capacity from \$8.00 to \$10.00.

Repealing Clause

Section 2 of Ch. 145, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 145, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 3, 1961.

3-203. (3575.3) Repealed.

Repeal

This section (Sec. 3, Ch. 124, L. 1927; Sec. 3, Ch. 146, L. 1939), relating to the

expenses of the state sealer of weights and measures and his deputies, was repealed by Sec. 242, Ch. 147, Laws 1963.

3-205. (3576) Inspectors of grain—samplers and weighers—qualifications—interest. The commissioner of agriculture shall appoint a chief inspector of grain for the state, who shall also serve as chief weigher of grain for the state, and such number of inspectors, samplers and weighers as may be necessary to properly and thoroughly enforce the provisions of this act. At all inspection points designated by the commissioner he shall provide sufficient inspectors and weighers to inspect and weigh all grain subject to state inspection, under the supervision of the chief inspector; provided, however, that grain held in transit for inspection and diversion only, need not be weighed. Such chief inspector and inspectors shall be able to qualify under the terms and in accordance with the United States Federal Grain Standards Act. No chief inspector, inspector, sampler or weigher shall be interested directly or indirectly in the handling, sorting, shipping, purchasing or selling of grain or grain products.

History: En. Sec. 22, Ch. 216, L. 1921; re-en. Sec. 3576, R. C. M. 1921; amd. Sec. 2, Ch. 154, L. 1929; amd. Ch. 1, Ch. 7, L. 1957; amd. Sec. 10, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a fourth

sentence reading, "The chief inspector, inspectors and weighers shall each give bond, to be approved by the commissioner, to the state in the sum of five thousand dollars (\$5,000.00) conditioned for faithful discharge of his duties."

3-226. (3588.2) Possession by warehouseman considered bailment, when—prior right of warehouse receipt holder to grain. Whenever any grain shall be delivered to any person, association, firm or corporation doing a grain, warehouse or grain elevator business in this state, and the

receipt issued therefor provides for the delivery of a like amount and kind, grade and quality to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered, and in no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except action by owners of such warehouse receipts to enforce the terms thereof, but such grain shall at all times in the event of failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding storage warehouse receipts for grain so stored with such bailee. [Effective January 1, 1965.]

History: En. Sec. 3588-B by Sec. 4, Ch. 41, L. 1923; amd. Sec. 11-101, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted from the

end of the section a clause reading, "and in such event grain on hand in any particular warehouse or elevator shall first be applied to the redemption and satisfaction of receipts issued by such warehouse."

3-227. (3589) Annual report of warehouseman, track buyer and grain dealer—special reports—penalty for failure to report. On June 30th of each year every warehouseman, track buyer and grain dealer shall make report, under oath to the commissioner of agriculture, on blanks or forms prepared by him, showing the total weight of each kind of grain received and shipped from or by such warehouseman, track buyer and licensed grain dealer under the laws of Montana, and also the amount of outstanding storage receipts on said date, and a statement of the amount of grain on hand to cover the same. The commissioner of agriculture may also require special reports from such warehouseman, grain dealer or track buyer at such times as the commissioner may deem expedient. The commissioner may cause the business of every warehouseman, track buyer and grain dealer and the mode of conducting the same to be inspected by his authorized agent, whenever deemed proper, and the books, accounts, records, papers and proceedings of every such warehouseman, track buyer and grain dealer shall at all times during business hours be subject to such inspection. Any person, firm, or corporation, who shall knowingly falsify any of its reports to the department of agriculture, or who shall refuse or fail to make such reports when requested to do so by the commissioner of agriculture or his agents, or who shall refuse or resist inspection as provided in this section, shall be guilty of a misdemeanor and be punished by a fine of not less than three hundred dollars (\$300.00), nor more than five hundred dollars (\$500.00).

History: En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923; amd. Sec. 2, Ch. 224, L. 1961.

Amendment

The 1961 amendment inserted "track buyer and grain dealer" after "warehouseman" near the beginning of the first sentence and near the end of the third sentence; inserted "or by" after "received and shipped from" in the first sentence; substi-

tuted "such warehouseman, track buyer and licensed grain dealer" for "such warehouse licensed" in the latter part of the first sentence; inserted "grain dealer or track buyer" after "warehouseman" in the second sentence; substituted "the business of every warehouseman, track buyer and grain dealer" for "every warehouse and business thereof" in the first part of the third sentence; and increased the minimum fine specified at the end of the section from \$50 to \$300.

3-228. (3589) Bond—license and fees of warehouseman, track buyer, grain dealer and others—penalty for operating without a license. Each person, firm, corporation or association or persons operating any public warehouse or warehouses subject to the provisions of this act, and every track buyer, grain dealer, broker, or commission man, or person or association of persons, merchandising in grain shall, on or before the first day of July each year, give a bond executed by a corporate surety authorized to do business in the state of Montana to the state of Montana, in such sum as the commissioner may require, conditioned upon the faithful performance of the acts and duties enjoined upon them by section 3-229, Revised Codes of Montana, 1947. Provided, however, that where a truck, tractor-trailer owner or operator purchasing grain in Montana for the first time for cash or by certified check, the bond provided for in this act shall not be required.

Every person or persons, firm, co-partnership, corporation, or association of persons, operating any public warehouse or warehouses, and every track buyer, grain dealer, broker, commission man, person or association of persons merchandising grain in the state of Montana, shall, on or before the first day of July of each year, pay to the state treasurer of Montana a license fee in the sum of fifteen dollars (\$15.00) for each and every warehouse, elevator, truck, tractor-trailer unit, or other place, owned, conducted, or operated by such person or persons, firm, co-partnership, corporation or association of persons, where or in which grain is received, stored and or shipped, and upon the payment of such fee of fifteen dollars (\$15.00) for each and every warehouse, elevator, truck, tractor-trailer unit, or other place, where or in which grain is merchandised within the state of Montana, the commissioner of agriculture shall issue to such person or persons, firm, co-partnership, corporation or association of persons, a license to engage in grain merchandising at the place or with the licensed units designated within the state of Montana, for a period of one (1) year save only that a public warehouseman shall be permitted to deliver grain previously stored with him, and save further that a producer may be permitted to deliver his own grain. And save further that a producer may buy and haul grain for his own use and that of his neighbors in his community, and save further that the operator of a feed lot in the state of Montana may buy and haul grain for use on his own lot. Any person, firm, association or corporation who shall engage in or carry on any business or occupation for which a license is required by this act without first having procured a license therefor, or who shall continue to engage in or carry on any such business or occupation after such license has been revoked, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than three hundred dollars (\$300.00) nor more than five hundred dollars (\$500.00), and each and every day that such business or occupation is so carried on or engaged in shall be a separate offense.

In addition to the bond and license fee, a public warehouseman shall carry adequate insurance approved by the commissioner of agriculture to protect the holders of warehouse receipts from loss. A public warehouseman license shall not be issued or may be revoked for failure to comply with this insurance requirement.

History: En. Sec. 33, Ch. 216, L. 1921; re-en. Sec. 3589, R. C. M. 1921; amd. Sec. 5, Ch. 41, L. 1923; amd. Sec. 1, Ch. 145, L. 1959; amd. Sec. 3, Ch. 224, L. 1961; amd. Sec. 1, Ch. 27, L. 1963.

Amendments

The 1959 amendment added the last paragraph to this section.

The 1961 amendment substituted "grain dealer" for "dealer" in the first paragraph and in the first sentence of the second paragraph; substituted the reference to section 3-229 near the end of the first paragraph for "the law"; added the proviso at the end of the first paragraph; inserted "truck, tractor-trailer unit" after "elevator" in two places in the first sentence of the second paragraph; inserted "or in which" after "where" in two places in the first sentence of the second paragraph; inserted "or" between "stored and" and "shipped" in the first sentence of the second paragraph; inserted "or with the licensed units" after "place" in the latter part of the first sentence of the second paragraph; added to the first sentence of the second paragraph the clauses reading, "save only that a public warehouseman shall be permitted to deliver grain previously stored with him, and save further that a producer may be permitted to deliver his own grain"; inserted the second sentence of the second paragraph; deleted

from the present third sentence of the second paragraph a parenthetical clause which followed "revoked" and read "save only that a public warehouseman shall be permitted to deliver grain previously stored with him"; and changed the fine provided for in the last sentence of the second paragraph by increasing the minimum from \$25 to \$300 and the maximum from \$100 to \$500.

The 1963 amendment substituted "executed by a corporate surety authorized to do business in the state of Montana" for "with good and sufficient sureties to be approved by the commissioner of agriculture" after "give a bond" in the first paragraph.

Separability Clause

Section 4 of Ch. 224, Laws 1961 read "If any section, sub-section, sentence, clause or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act."

Repealing Clause

Section 2 of Ch. 145, Laws 1959 repealed all acts and parts of acts in conflict therewith.

References

Cited in *Kohles v. St. Paul Fire & Marine Ins. Co.*, — M —, 396 P 2d 724, 726.

3-233. Fees—disposition. All fees and other charges authorized by law to be fixed by the commissioner of agriculture for the inspection, grading, weighing and protein-testing of grain shall be by said commissioner kept as near the actual cost of such services as is possible. All such fees and charges shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay all claims for expense incurred in inspecting, grading, weighing and protein-testing of grain, when such claims have been approved as provided by law. No funds of the state shall be used by the commissioner in carrying out such services, except moneys presently appropriated.

History: En. Sec. 1, Ch. 203, L. 1957; amd. Sec. 27, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" for "in a fund to be known as 'The Department of Agriculture Grain Services' Revolving Fund'" at the end of the third sentence; substituted "Fees deposited in the earmarked

revenue fund may be used" for "The state auditor is authorized to draw warrants upon such fund" at the beginning of the fourth sentence; substituted "as provided by law" for "by the state board of examiners" at the end of the fourth sentence; and deleted the former fifth sentence requiring the commissioner to submit a budget to the legislature.

CHAPTER 4—FARM STORAGE OF GRAIN AS BASIS FOR FARM CREDIT
—INSPECTION AND CERTIFICATION

Section 3-408. Fees for inspectors.

3-420. Expenses for administration of act—how paid—fees for inspection.

3-407. (3592.17) Repealed.

Repeal

This section (Sec. 8, Ch. 27, L. 1929), relating to the bonds of inspectors, was repealed by Sec. 51, Ch. 177, Laws 1965.

3-408. (3592.18) Fees for inspectors. The commissioner shall from time to time fix the fees or compensation of inspectors for their services. Such fees or compensation shall be based upon a certain sum per bushel of the grain so inspected.

History: En. Sec. 9, Ch. 27, L. 1929; amd. Sec. 28, Ch. 147, L. 1963.

vision at the end of the second sentence reading: "and shall be paid monthly by the commissioner by warrants drawn upon the fund created by the provisions of this act."

Amendment

The 1963 amendment deleted a pro-

3-420. (3592.30) Expenses for administration of act—how paid—fees for inspection. The expense of the administration of this act shall be paid by the owners of the grain, and the fee collected at the time of inspection and sealing. The amount so paid shall be stated in the certificate. The fee for such inspection shall not exceed one-half cent per bushel, except that when the amount of grain offered for inspection by a single applicant is found to be less than one thousand bushels the minimum fee shall be for one thousand bushels. Such fees shall be paid to the commissioner and deposited with the state treasurer in the earmarked revenue fund.

History: En. Sec. 21, Ch. 27, L. 1929; amd. Sec. 5, Ch. 96, L. 1931; amd. Sec. 29, Ch. 147, L. 1963.

Amendment

The 1963 amendment, at the end of the last sentence, substituted "in the ear-

marked revenue fund" for the following: "and the fund shall be known as the department of agriculture revolving appropriation fund for grain grading, and upon such fund the state auditor shall draw warrants to pay the general expenses of this act."

CHAPTER 5—PROTEIN TESTING OF GRAIN

Section 3-510. Fees for protein tests—disposal of proceeds.

3-510. (3592.40) Fees for protein tests—disposal of proceeds. The commissioner of agriculture shall fix the fees for testing grain for protein content, and such fees shall be collected by the analyst when tests are made, and remitted to the commissioner of agriculture once each month, and deposited with the state treasurer in the earmarked revenue fund.

History: En. Sec. 10, Ch. 111, L. 1931; amd. Sec. 30, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "in the earmarked revenue fund" for "in a fund known as the department of agri-

culture revolving appropriation for grain grading, out of which all operating expenses of this act are to be paid" at the end of the first sentence; and deleted a second sentence providing for the disposition of surplus accumulated from fees.

CHAPTER 6—FARM STORAGE PUBLIC WAREHOUSEMEN

Section 3-602. Farm storage public warehouseman defined—license—fee—disposal.

3-602. (3592.45) Farm storage public warehouseman defined—license—fee—disposal. All persons, firms, corporations or associations, now or

hereafter engaged in the business of buying, selling or storing grain in the state of Montana, and licensed by the commissioner to conduct such business, may, upon application in such form as shall be described by the commissioner, receive a license as farm storage public warehousemen in compliance with the provisions of this act, and the rules and regulations of the commissioner. All licenses issued under the provisions of this section shall run for one (1) year, and expire on May 31st of each year. The license fee, which must accompany the application is hereby fixed at five dollars (\$5.00) for each warehouse operated, except that where more than one (1) warehouse operated by the same person, firm, corporation or association is located in one (1) place only one (1) license need be applied for. The fees collected under the provisions of this act shall be paid into the state treasury and credited to the general fund.

History: En. Sec. 2, Ch. 174, L. 1931;
amd. Sec. 31, Ch. 147, L. 1963.

eral fund" for "department of agriculture, labor, and industry revolving fund for grain grading" at the end of the section.

Amendment

The 1963 amendment substituted "gen-

CHAPTER 7—BEAN WAREHOUSEMEN

Section 3-704. License required of persons warehousing beans—fee—disposal of moneys—expiration date.

3-704. (3592.57) License required of persons warehousing beans—fee—disposal of moneys—expiration date. All persons engaged in the business of buying and selling at wholesale or warehousing and storing beans, or receiving or soliciting beans for purchase, sale or storage either within or without the state of Montana shall, before engaging in such business, procure a license from the commissioner and shall pay a license fee to the department of agriculture of Montana in the sum of fifteen dollars (\$15.00), which shall be deposited with the treasurer of the state of Montana and credited to the general fund. Said licenses shall be renewed annually and the prescribed fee shall be paid annually. All licenses shall be issued for the fiscal year or fraction thereof and ending June 30th next following.

History: En. Sec. 4, Ch. 164, L. 1935;
amd. Sec. 32, Ch. 147, L. 1963.

culture' to be expended by the chief of the said division upon approval of the treasurer of the state of Montana, and all moneys so deposited shall be held subject to the uses of the chief of the division of horticulture for the purpose of carrying out the provisions of this act."

Amendment

The 1963 amendment substituted "the general fund" at the end of the first sentence for "the special fund known as the 'revolving fund of the division of horti-

CHAPTER 8—AGRICULTURAL SEEDS

Section 3-802. Labeling of agricultural seed.

3-816. Vegetable or flower seeds—labeling required.

3-817. Inspection of vegetable and flower seeds by director of state grain and seed laboratory—reports—enforcement.

3-818. Prohibitions.

3-819. Penalty.

3-802. (3594) Labeling of agricultural seed. The owner, vendor, or person in possession of each and every package, parcel, or lot of agricul-

tural seeds, as defined in the preceding section, which contains one (1) pound, or more, of such agricultural seeds, whether in package or in bulk, shall before offering such seeds for sale affix thereto, in a conspicuous place on the exterior of the container of such agricultural seeds, a written or printed label in the English language in legible type or copy, such label containing a statement specifying:

1 to 9. * * * [Same as parent volume.]

10. Prohibition of sales of certain seeds. It shall be unlawful for any person, firm, co-partnership, corporation or association to sell, or to offer for sale, or to expose or display for sale, any agricultural seed within the state of Montana, irrespective of the place of origin of such seed, which contains noxious weed seeds of any one, or more, of said groups of noxious weed seeds as follows:

(1) to (5). * * * [Same as parent volume.]

(6) In mixtures represented by printed labeling, by pictorial illustrations, or in any manner whatsoever, to be for lawn seeding purposes, unless they contain at least fifty per cent (50%) pure seed of perennial fine-leaved species which shall be specified by rules and regulations pursuant to this act. Provided, however, grass mixtures which do not contain fifty per cent (50%) pure seed of perennial fine-leaved grasses may be sold. Provided further that when in packages of twenty-five (25) pounds or less, they shall carry the statements "Not recommended for a fine-leaved perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable."

A definition of fine-leaf varieties to be promulgated in the regulations is as follows:

(a) Bluegrasses—all varieties except Canada Bluegrass (*Poa Compressa*);

(b) Chewings Red Fescue and all improved varieties;

(c) Creeping Red Fescue and all improved varieties;

(d) Bentgrass—all varieties.

11. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 12, L. 1913; re-en. Sec. 3594, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1929; amd. Sec. 1, Ch. 192, L. 1937; amd. Sec. 3, Ch. 88, L. 1939; amd. Sec. 2, Ch. 155, L. 1951; amd. Sec. 1, Ch. 168, L. 1961.

Amendment

The 1961 amendment added a new clause (6) to subd. 10.

3-816. Vegetable or flower seeds—labeling required. Any individual, firm, partnership, association, corporation or other group selling, offering to sell, or possessing for sale at wholesale or retail vegetable or flower seeds, within the state of Montana must, whether in package or in bulk, affix thereto in a conspicuous place on the exterior of the container of such seeds, a written or printed label or tag in the English language in legible type, script or copy, such label containing a statement specifying:

Each container of less than one pound:

1. Kind and variety of seed.

2. With the name and address of the person who labeled the seed or who sells, offers or exposes such seed for sale within this state.

3. With the name and number per pound of each kind of restricted noxious weed seed.

4. In the case of vegetable seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act of 1960 with subsequent revisions:

- (a) The percentage of germination.
- (b) The percentage of hard seed, if more than one per cent.
- (c) The month and year the test was made.
- (d) The words, "below standard germination," in not less than eight point bold face type.

5. Vegetable or flower seed containing any weed seeds in the "Prohibited List" shall not be sold in the state of Montana.

Each container of one pound or more:

1. Kind and variety of seed.
2. The lot number or other lot identification.
3. The name and number per pound of each kind of restricted noxious weed seed.
4. The percentage of germination.
5. The percentage of hard seed, if more than one per cent.
6. The month and year the test was made.
7. The name and address of the person who labeled such seed or who sells, offers or exposes such seed for sale within this state.

8. Vegetable or flower seed containing any weed seeds in the "Prohibited List" shall not be sold in the state of Montana.

Vegetable or flower seed containing weed seeds in the "Restricted List" may be sold in the state of Montana if weed seeds present are not in excess of one-half per cent ($\frac{1}{2}\%$) by weight of vegetable or flower seed. Vegetable or flower seed containing weed seeds not in either the prohibited or restricted lists may be sold in the state of Montana if total weed seeds present are not in excess of two per cent (2%) by weight of vegetable or flower seed. The name or names of all restricted weed seed species present, and the number thereof, singly or collectively, per pound of vegetable or flower seed, shall appear on the label or tag.

Prohibited List	Quackgrass
Canada Thistle	(<i>Agropyron repens</i>)
(<i>Cirsium arvense</i>)	Russian knapweed
(<i>Carduus arvensis</i>)	(<i>Centaurea picris</i>)
Leafy spurge	(<i>Centaurea repens</i>)
(<i>Euphorbia esula</i>)	Perennial Sow Thistle
White Top	(<i>Sonchus arvensis</i>)
(<i>Lepidium Cardaris</i>	Wild Morning Glory (Field
<i>draba</i>)	Bindweed) (<i>Convolvulus</i>
Perennial peppergrass	<i>arvensis</i>)
(<i>Cararia repens</i>)	Toadflax
Hoary cress	(<i>Linaria dalmatica</i>)
(<i>Hymenophysa (Cardaria</i>	Creeping bellflower
<i>pubescens</i>)	(<i>Campanula</i>
	<i>rapunculoides</i>)

Restricted List

Dodder
(*Cuscuta* spp.)
Blue Flowering Lettuce
(*Lactuca pulchella*)
St. Johnswort (Klamath-
weed)
(*Hypericum perforatum*)
Wild Onion (Wild Garlic)
(*Allium vineale*)
Ox-eye Daisy
(*Chrysanthemum*
leucanthemum)
Halogeton
(*Halogeton glomeratus*)
Medusa-head wildrye
(*Elymus Caput-Medusea*)

Spotted knapweed
(*Centaurea maculosa*)
Hoary false alyssum
(*Berteroa incanna*)
Common toadflax
(*Linaria vulgaris*)
Wild Oats
(*Avena fatua*)
Curled Dock
(*Rumex crispus*)
Chickweed
(*Stellaria* spp.)
Plantain
(*Plantago* spp.)
Dandelion
(*Taraxacum officinale*)
Crabgrass
(*Digitaria ischaemum*)

9. The full name and address of the seedsman, importer, dealer or agent or of other persons or person, firm or corporation selling, offering, or exposing the said vegetable or flower seed for sale.

History: En. Sec. 1, Ch. 196, L. 1961.

Title of Act

An act to provide that vegetable or flower seeds to be offered for sale at wholesale or retail in the state of Montana to be properly tagged and dated to apprise the purchaser of certain informa-

tion relative to the contents of the seed, weed, content, and germination; to prescribe duties of the commissioner of agriculture and the director of the Montana grain inspection laboratory and to provide for penalties for non-compliance with this act.

3-817. Inspection of vegetable and flower seeds by director of state grain and seed laboratory—reports—enforcement. The director of the Montana grain inspection laboratory, of the Montana agricultural experiment station, his agent, or agents, shall inspect, examine, or make analyses of and test vegetable or flower seeds sold, offered or exposed for sale in the state at such time and place and to such an extent as he and the commissioner of agriculture may determine. Such director shall report to the commissioner of agriculture all violations as they appear. He shall also annually and not later than September first, make a report to the commissioner of agriculture of all tests made and the results thereof, which report may be published by the commissioner of agriculture, separately, or along with any other annual or biennial report of the department. Such director, his agent or agents, and the commissioner of agriculture and his authorized representatives shall have free access at all reasonable hours to all premises or structures to make examination of any seeds, or any other premises of any warehouse, elevator, or railway company, and upon tendering payment thereof, at the current value, may take any sample or samples of such seeds.

It is hereby made the duty of the commissioner of agriculture of the department of agriculture to administer and enforce this act. For that purpose, he is hereby empowered to make all proper rules and regulations

not inconsistent with this act or any federal laws now in effect or which may hereafter be enacted. To aid in the enforcement, he or his agents shall have power to issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of vegetable or flower seed which the commissioner of agriculture or his agent finds in violation of any of the provisions of this act, which order shall prohibit further sale of such seed until such officer has evidence that the law has been complied with. The seed shall not be confiscated nor destroyed and upon proper correction, by reprocessing, labeling or otherwise, and when in the judgment of the commissioner of agriculture, the requirements of this act have been met, the stop sale order shall be lifted and the seed be permitted to be sold in the regular channels of trade. The director of the Montana grain inspection laboratory of the Montana agricultural experiment station shall formulate all necessary and proper rules and regulations relating to all his duties enumerated herein.

History: En. Sec. 2, Ch. 196, L. 1961.

3-818. Prohibitions. (a) It shall be unlawful to sell, offer or expose for sale any vegetable or flower seed within this state:

1. Not labeled as required herein, or having a false or misleading label;
2. Seed to which there has been false or misleading advertisement;
3. Unless the test to determine the percentage germination shall have been completed within nine months, exclusive of the calendar month in which the test was completed prior to the sale, offering for sale, or exposure for sale;
4. Containing weed seeds in the prohibited list;
5. Containing weed seeds in the restricted list in excess of one-half per cent ($\frac{1}{2}\%$) by weight of vegetable or flower seed;
6. Containing a total of all weed seeds in excess of two per cent (2%) of the whole by weight;

(b) It shall be unlawful for any individual, firm, partnership, association, or corporation within this state:

1. To detach, alter, deface, or destroy any label provided for in this act or the rules and regulations made and promulgated hereunder, or to alter or substitute seed, in a manner that may defeat the purposes of this act;
2. To disseminate any false or misleading advertisement concerning vegetable or flower seeds in any manner or by any means;
3. To hinder or obstruct in any way any authorized person in the performance of his duties, under this act;
4. To fail to comply with a "stop sale" order.

History: En. Sec. 3, Ch. 196, L. 1961.

3-819. Penalty. Any person, firm, or corporation who sells, offers or exposes for sale or distribution in the state any flower or vegetable seeds for seeding purposes, without complying with the requirements of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars (\$25.00), nor more than one

hundred dollars (\$100.00) and costs of such prosecution, and upon conviction of the second or any subsequent offense shall be fined not less than fifty (\$50.00) nor more than five hundred dollars (\$500.00) and costs of such prosecution.

History: En. Sec. 4, Ch. 196, L. 1961.

CHAPTER 9—SEALERS OF GRAIN

Section 3-904. Filing fee of commissioner—use of funds.

3-904. (3602.4) Filing fee of commissioner—use of funds. The farm storage commissioner shall collect the sum of fifty cents for filing the certificate in his office and the funds so derived shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 4, Ch. 111, L. 1933; amd. Sec. 33, Ch. 147, L. 1963.

treasury to the credit of the general fund” for “used for the purpose of providing blank certificates and seals for the use of the sealers and other expenses in the administration of this act.”

Amendment

The 1963 amendment, at the end of the section, substituted “deposited in the state

CHAPTER 11—HORTICULTURE—CONTROL OF FRUIT PESTS AND DISEASES

Section 3-1103. Destruction of fruit pests—use of crates.

3-1103. (3610) Destruction of fruit pests—use of crates. For the purpose of preventing the spread of contagious disease among fruit and fruit trees, and for the prevention, treatment, cure and extirpation of fruit pests and diseases of fruit and fruit trees, and for the disinfection of grafts, scions, and orchard debris, empty fruit boxes or packages, or other suspected material or transportable articles dangerous to orchards, fruit and fruit trees, the commissioner of agriculture may prescribe regulation for the inspection, disinfection or destruction thereof, which regulation shall be circulated in printed form by the commissioner among fruit growers and fruit dealers of the state, and shall be published at least ten days in two newspapers of general circulation in the state, and shall be posted in three conspicuous places in each county in the state, one of which shall be at the county courthouse thereof. For further prevention of the spread of diseases dangerous to fruit and fruit trees, it shall be unlawful for any person or persons, dealer or dealers, to allow, or cause to be used a second time, any crate, box, barrel, package or wrapping once having contained nursery stock, except that at the written request of a nurseryman, an inspector may permit boxes or packages having contained nursery stock to be thoroughly fumigated by him or in his presence, at the expense of the nurseryman, for which said inspector shall give a receipt and duly mark the box or package; otherwise, the destruction of the same must be made in its entirety, and the finding of such crate, box, barrel, package or wrapping in possession of any person or persons, dealer or dealers, other than the consignee, shall be considered prima facie evidence of a violation of this act.

The commissioner of agriculture or his authorized representative is hereby authorized to seize and destroy by burning, without breaking, such

crate, box, barrel, package or wrapping wherever found, and to prosecute said violator or violators.

History: En. Sec. 39, Ch. 216, L. 1921;
re-en. Sec. 3610, R. C. M. 1921; amd. Sec.
1, Ch. 29, L. 1963.

Amendment

The 1963 amendment deleted the words "fruit or" which followed "wrapping once having contained" in the first part of the second sentence in the first paragraph.

CHAPTER 12—NURSERIES AND NURSERYMEN— LICENSE AND REGULATION

Section 3-1212. License required of nurserymen—application and payment of fees—seasonal nurserymen defined.

3-1212. License required of nurserymen—application and payment of fees—seasonal nurserymen defined. It shall be unlawful for any person, firm, or corporation to engage in, conduct, or carry on the business of selling, dealing in, or importing into this state for sale or distribution, any nursery stock, or to act as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock, or to solicit orders for the purchase of nursery stock, without first having obtained from the commissioner of agriculture and having in force a license to do so, and it shall be unlawful for any person to falsely represent that he is an agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock. No license shall be issued until the applicant therefor shall have attested to the application for a license furnished upon request by the commissioner of agriculture, paid the fees, as in this act required, and all agents, salesmen, and solicitors for licensed nurseries shall be granted salesmen's certificates free of charge, upon request of the licensee. No license shall be issued to a seasonal nurseryman unless the applicant shall have made application for such license at least thirty (30) days in advance of doing business within the state of Montana each year. A seasonal nurseryman is any person, firm, corporation, or other, engaged in the business of selling, dealing in, or importing into the state of Montana, for sale or distribution, any nursery stock which is for sale only during certain growing seasons and whose place of business is open only during certain growing seasons and not continuously throughout the year.

All licenses shall be in the name of the person, firm, or corporation licensed, and shall show the purpose for which issued, the name and location of the nursery or place of business of the nurserymen or dealer licensed or represented by the agent, salesman, or solicitor. All applications for a license must be in the name of the person, firm, or corporation to be licensed, also it must show the nursery acreage represented by the applicant, and such other information as is desired by the commissioner of agriculture. All licenses must bear the date of issue and shall expire the first day of July next following the date of issue. The license fee shall be fifteen dollars (\$15.00) per annum for a general nursery, dealing in all kinds of nursery products; ten dollars (\$10.00) per annum for a nursery dealing in small fruits, ornamental shrubs, bulbs and perennials; five dollars (\$5.00) for a nursery dealing in bulbs and perennials only; and fifteen dollars (\$15.00) for seasonal nurserymen.

History: En. Sec. 1, Ch. 220, L. 1943; amd. Sec. 1, Ch. 121, L. 1963.

and fourth sentences to the first paragraph and the words "and fifteen dollars (\$15.00) for seasonal nurserymen" at the end of the second paragraph.

Amendment

The 1963 amendment added the third

CHAPTER 14—STANDARD GRADES AND BRANDS FOR
MONTANA FARM PRODUCTS

Section 3-1404. Grading and branding of products required—labeling of culls.

3-1404. (3633.4) Grading and branding of products required—labeling of culls. (a) to (d). * * * [Same as parent volume.]

(e) Provided further that U. S. commercial grade shall be a standard grade in the state of Montana.

History: En. Sec. 4, Ch. 165, L. 1933; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963.

"not" which appeared between "shall" and "be" in subsection (e); and deleted former subsection (f), for text of which see parent volume.

Amendment

The 1963 amendment deleted the word

CHAPTER 15—MISCELLANEOUS POWERS AND DUTIES OF
DEPARTMENT OF AGRICULTURE

Section 3-1510. Intrastate transactions with paints, etc.—label—contents of label.

3-1511. Penalty for violations.

3-1512. Possession as prima facie evidence.

3-1513. Enforcement of act.

3-1514. Designation of laboratory for analysis—report of analysis.

3-1515. County attorney—duties regarding act.

3-1510. Intrastate transactions with paints, etc.—label—contents of label. Every person, firm, or corporation, who manufactures for sale, sells, offers for sale, or ships in intrastate transactions within the state, any paint, mixed paint, paste paint, or compound intended for use as paint, or any varnish, decorative protective coatings or additives for wood, metal, concrete, or roof coatings, but excluding artists' colors, waxes and polishes, shall label the same in a clear and distinct manner. Such label shall recite a full analysis of the content with a specification of pigment and vehicle. An analysis by percentage of the pigment content and the analysis by percentage of the vehicle content. The label shall further recite the name and address of the manufacturer or distributor of the product. The analysis and composition shall be subject to inspection by the chief chemist of a laboratory designated by the department of agriculture of the state of Montana.

History: En. Sec. 1, Ch. 69, L. 1959.

in intrastate transactions within the state; providing for the inspection and analysis of paints, varnishes, roof coatings and other protective and decorative materials by a chief chemist designated by the department of agriculture; providing for penalties for violation of this act.

Title of Act

An act requiring the labeling of all containers of paints, varnishes, roof coatings and other protective and decorative materials offered for sale, sold, or shipped

3-1511. Penalty for violations. Any person, firm, or corporation who fails to comply with all of the provisions of this act shall be subject to prosecution and upon conviction, to a fine of not less than twenty-five

(\$25.00) dollars and not more than one hundred (\$100.00) dollars and all costs, including cost of analysis to the amount of twenty-five (\$25.00) dollars or by imprisonment in a county jail not to exceed sixty (60) days.

History: En. Sec. 2, Ch. 69, L. 1959.

3-1512. Possession as prima facie evidence. The possession, either constructive or actual by any person, firm, or corporation dealing in said articles or substances hereinabove described and not properly labeled as provided by section 1 [3-1510] of this act, shall be considered prima facie evidence that the same is kept for sale in violation of the provisions of this act and punishable under it.

History: En. Sec. 3, Ch. 69, L. 1959.

3-1513. Enforcement of act. The department of agriculture of the state of Montana shall be responsible for the enforcement of this act and shall appoint any assistants or agents deemed necessary for the proper enforcement of all the provisions of this act. These appointed agents or assistants shall be duly authorized for the purpose, and shall have access to all places of business, factories, stores and buildings used for the manufacture or sale of paints or other products described in section 1 [3-1510] of this act. They shall have the power and authority to purchase and open any package, can, jar, tub or other receptacle containing any of the articles recited in section 1 [3-1510] of this act.

History: En. Sec. 4, Ch. 69, L. 1959.

3-1514. Designation of laboratory for analysis—report of analysis. The department of agriculture of the state of Montana shall designate the laboratory where analysis of the products recited in section 1 [3-1510] of this act shall be made. When analysis of the products mentioned in section 1 [3-1510] of this act are found to be in violation of this act, the chief chemist of the laboratory appointed and designated by the department of agriculture shall report the facts of his tests to the department of agriculture. Every certificate duly signed and acknowledged by the chief chemist of the laboratory relating to the analysis of any of the products mentioned in section 1 [3-1510] of this act shall be presumptive evidence of the facts therein stated.

History: En. Sec. 5, Ch. 69, L. 1959.

3-1515. County attorney—duties regarding act. It shall be the duty of the county attorney of the county of the state of Montana wherein the violation of this act occurred, to prosecute every person, firm, or corporation violating any of the provisions of this act when the evidence thereof has been presented by the chief chemist of the laboratory making the analysis as provided for in this act.

History: En. Sec. 6, Ch. 69, L. 1959.

CHAPTER 17—COMMERCIAL FERTILIZER—REGULATION OF SALE

Section 3-1714. Definition of terms.

3-1715. Registration and licenses.

3-1716. Labeling.

3-1717. Inspection fees.

3-1723. Rules and regulations and hearings.

3-1724. Cancellation of registration.

3-1727. Violations—enforcement proceedings—judicial review.

3-1701 to 3-1711. (4208.1 to 4208.11) Repealed.

Repeal

These sections (Secs. 1 to 11, Ch. 153, L. 1931; Secs. 1 to 7, Ch. 67, L. 1935; Secs. 1 to 5, Ch. 183, L. 1939; Secs. 1, 2, Ch. 72, L. 1947; Sec. 1, Ch. 129, L. 1951;

Sec. 1, Ch. 33, L. 1959; Sec. 34, Ch. 147, L. 1963), relating to standards for and analysis of commercial fertilizer, were repealed by Sec. 3, Ch. 55, Laws 1965.

3-1714. Definition of terms. (a) The term “fertilizer materials” means any substance containing nitrogen phosphorus, potassium, or any recognized plant nutrient element or compound which is used primarily for its plant nutrient content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures.

(b) to (e). * * * [Same as parent volume.]

(f) Guaranteed analysis:

(1) Until July 1, 1964, and thereafter until the commissioner prescribes the alternative form of “guaranteed analysis” in accordance with the provisions of subparagraph (2) hereof. The term “guaranteed analysis” shall mean the minimum percentage of plant nutrients claimed in the following order and form:

a. Total Nitrogen (N)	_____	per cent
Available Phosphoric Acid (P_2O_5)	_____	per cent
Soluble Potash (K_2O)	_____	per cent

b. For unacidulated mineral phosphatic materials and basic slag, both total and available phosphoric acid and the degree of fineness. For bone, tankage, and other organic phosphatic materials, total phosphoric acid.

c. Guarantees for plant nutrients other than nitrogen, phosphorus and potassium may be permitted or required by regulation of the commissioner. The guarantees for such other nutrients shall be expressed in the form of the element. The sources of such other nutrients (oxides, salt, chelates, etc.) may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the commissioner. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by section 3-1718 (b) of this act.

d. Except when prohibited by regulation, potential basicity or acidity expressed in terms of calcium equivalent in multiples of one hundred pounds per ton may be shown.

(2) At any time after July 1, 1964, that the commissioner finds, after public hearing following due notice, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form

would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, he may require by regulation thereafter the "guaranteed analysis" shall be in the following form:

Total Nitrogen (N)	-----	per cent
Available Phosphorus (P)	-----	per cent
Soluble Potassium (K)	-----	per cent

provided, however, that the effective date of said regulation shall be not less than six (6) months following the issuance thereof, and provided, further, that for a period of two (2) years following the effective date of said regulation, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash; provided, however, that after the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium shall constitute the grade.

(g) The term, "grade" means the percentages of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the "guaranteed analysis."

(h) to (o). * * * [Same as parent volume.]

(p) A specialty fertilizer is a commercial fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses and nurseries, and may include commercial fertilizers used for research or experimental purposes.

(q) A "soil amendment" is any material not included under commercial fertilizer, or unmanipulated animal and vegetable manures, lime, limestone, marl, unground bone, or those products subject to the federal insecticide, fungicide or rodenticide act as amended, which is added to soil or to plants for purposes of influencing the growth, yield or quality of the crop or soil flora or fauna or other soil characteristics.

History: En. Sec. 3, Ch. 41, L. 1957;
amd. Sec. 1, Ch. 43, L. 1963.

Amendment

The 1963 amendment substituted "phosphorus" for "phosphoric acid" and "potassium" for "potash" in subsection (a); inserted in subparagraph (f) (1) the matter preceding the first period therein; inserted the designation for subparagraph (f) (1) a; deleted from the beginning of former subparagraph (f) (2) a clause reading, "The term 'guaranteed analysis'

in the form specified in subparagraph (1) includes:"; redesignated former subparagraphs (f) (2) (i) and (f) (2) (iii), respectively, as (f) (1) b and (f) (1) d; substituted a new subparagraph (f) (1) c for a former subparagraph (f) (2) (ii) reading, "When permitted by the commissioner, additional plant nutrients expressed as the elements"; inserted a new paragraph (f) (2); inserted the words "phosphorus or" and "soluble potassium or" in paragraph (g); and added new paragraphs (p) and (q).

3-1715. Registration and licenses. (a) Each brand and grade of commercial fertilizer and each "soil amendment" shall be registered before being offered for sale, sold or distributed in this state. The application for registration shall be submitted to the commissioner on a form furnished by the commissioner and shall be accompanied by a fee of thirty-

five dollars (\$35) per brand and ten dollars (\$10) per grade for each fertilizer and for each soil amendment guaranteeing plant nutrients and claiming value as a fertilizer. The registration fee shall be five dollars (\$5) for each soil amendment making no guarantees for plant nutrients or claims for fertilizer value. All fees collected shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act. Upon approval by the commissioner, a copy of the registration shall be furnished to the applicant. All registrations expire on December 31 of each year. The application shall include the following information:

- (1) The brand and grade.
- (2) The guaranteed analysis.
- (3) The sources from which the nitrogen, phosphorus and potassium are derived.
- (4) The commissioner may require a manufacturer of commercial fertilizer or soil amendment to furnish additional information if the foregoing does not adequately describe the fertility value claimed and/or the composition of the product.
- (5) The name and address of the registrant.
- (b) A distributor shall not be required to register any brand or grade of commercial fertilizer which is already registered under this act by another person.
- (c) The plant nutrient content of each and every brand and grade of commercial fertilizer must remain uniform for the period of registration.
- (d) Any distributor who blends or mixes fertilizer materials to a customer's order without a guaranteed analysis of the mixture in accordance with part (a) of this section, must first make application to obtain a license from the commissioner. The application for such a license shall be submitted in duplicate to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee as herein prescribed which sum shall constitute the license fee in event the license is granted. If said distributor blends or mixes fertilizer materials at more than one fixed location, or by more than one mobile mechanical unit, then a license is required for each location and for each such mobile mechanical unit. The license shall be twenty-five dollars (\$25) in the case of each location, but in the case of mobile units each such unit owned and operated by any one distributor shall be licensed at a rate of twenty-five dollars (\$25) for the first unit, and ten dollars (\$10) for each such additional mobile unit. The license shall expire on December 31 of each year.

Fees so collected shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act. Each licensee shall furnish the commissioner with a confidential written statement of the tonnage of each grade of fertilizer material used by him in this state in his blending and mixing operation. Said statement shall cover the semiannual periods ending June 30 and December 31 of each year, and shall be filed with the commissioner not later than 30 days (which may be extended on valid reason therefor an

additional thirty days, on written requests to the commissioner) after the close of each semiannual period. In lieu of the guaranteed analysis, the licensee must furnish to each and every purchaser and consumer in written or printed form, an invoice or delivery ticket showing the net weight and guaranteed analysis of each and every one of the materials used, which shall accompany delivery.

The distributor shall at all times produce an intimate and uniform mixture of fertilizer materials or soil amendments. When two or more fertilizers are delivered in the same load, they shall be intimately and uniformly mixed unless they are in separate compartments.

The commissioner is authorized and empowered to cancel the license as herein provided upon satisfactory evidence that the licensee has used fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this section; provided that no license shall be revoked or refused until the licensee shall have been given a hearing by the commissioner pursuant to section 3-1723 of this act.

History: En. Sec. 4, Ch. 41, L. 1957; amd. Sec. 2, Ch. 43, L. 1963; amd. Sec. 35, Ch. 147, L. 1963; amd. Sec. 1, Ch. 55, L. 1965.

Compiler's Note

This section was amended twice in 1963—by Chapter 43 and by Chapter 147. Neither amendatory act mentioned nor incorporated the amendments made by the other. Since the two amendments do not appear to conflict, the compiler has made a combined section, incorporating both amendments.

Amendments

Chapter 43, Laws 1963, inserted "and each 'soil amendment'" near the beginning of subsection (a); substituted "phosphorus and potassium" for "phosphoric acid and potash" in clause (a) (3); added a clause (a) (6) reading, "For soil amendments, in addition to the information required in paragraphs (1), (2), (3), (4), and (5) of this section, applications for registration must include the name and chemical designation and content of active ingredients"; and completely rewrote subsection (d), for original text of which see parent volume.

Chapter 147, Laws 1963, added "which shall be deposited in the state treasury to the credit of the general fund" at the end

of the second sentence of subsection (a); and deleted the former third sentence of subsection (a), reading: "Fees so collected shall constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration of this act."

The 1965 amendment added the words "for each fertilizer and for each soil amendment guaranteeing plant nutrients and claiming value as a fertilizer" now appearing at the end of the second sentence of subsection (a); inserted the third sentence of subsection (a); substituted the fourth sentence of subsection (a) for the clause added to the second sentence of subsection (a) by Chapter 43, Laws 1963; inserted "or soil amendment" after "commercial fertilizer" in paragraph (a) (4); deleted paragraph (a) (6) as added by Chapter 43, Laws 1963; substituted "shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act" in the first sentence of the second paragraph of subsection (d) for "shall constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration of this act"; and made another minor correction in the second paragraph of subsection (d).

3-1716. Labeling. (a) and (b). * * * [Same as parent volume.]

(c) Soil amendments shall be labeled in accordance with paragraph (a) of this section or if distributed in bulk, paragraph (b), and in addition shall show the name or chemical designation and content of the active ingredients.

History: En. Sec. 5, Ch. 41, L. 1957; amd. Sec. 3, Ch. 43, L. 1963.

Amendment

The 1963 amendment added subsection (c).

3-1717. Inspection fees. (a) There shall be paid to the commissioner for all commercial fertilizers offered for sale, sold, or distributed in this state an inspection fee at the rate of fifteen cents (15¢) per ton: Provided that sales to manufacturers or exchanges between them are hereby exempted. All fees collected under this section shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act. On individual packages of commercial fertilizer containing ten (10) pounds or less, there shall be no inspection fee. Where a person sells commercial fertilizer in packages of ten (10) pounds or less and in packages over ten (10) pounds, the inspection fee shall apply only to that portion sold in packages of over ten (10) pounds.

(b) Payment of the inspection fee shall be evidenced by a statement made in due form of law, of commercial fertilizer distributed, together with documents showing that fees corresponding to the tonnage were received by the commissioner.

Every registrant who distributes commercial fertilizer in this state shall:

File an affidavit semiannually within thirty (30) days after each January 1 and each July 1 of each year setting forth the number of net tons of commercial fertilizer distributed in this state during the preceding six-months' (6) period; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. If the tonnage report is not filed and the payment of the inspection fee is not made within fifteen (15) days after the date due, a collection fee amounting to ten (10) per cent (minimum ten dollars (\$10.00)) of this amount due shall be assessed against the registrant, and the amount of fees due shall constitute a debt and become the basis of a judgment against the registrant.

History: En. Sec. 6, Ch. 41, L. 1957; amd. Sec. 36, Ch. 147, L. 1963; amd. Sec. 6, Ch. 248, L. 1965.

Amendments

The 1963 amendment substituted "be deposited in the state treasury to the credit of the general fund" for "constitute a fund for payment of the costs of inspection, sampling, and analysis and other expenses necessary for the administration

of this act" in the second sentence of subd. (a).

The 1965 amendment substituted "All fees collected under this section" for "Fees so collected" at the beginning of the second sentence of subsection (a); and substituted "earmarked revenue fund and shall be used for the expenses of administering this act" for "general fund" at the end of the second sentence of subsection (a).

3-1719. Repealed.

Repeal

This section (Sec. 8, Ch. 41, L. 1957), relating to minimum chemical content of

plant food, was repealed by Sec. 4, Ch. 43, Laws 1963.

3-1723. Rules and regulations and hearings. (a) For the enforcement of this act, the commissioner is authorized to prescribe and, after public hearing: (1) having notified by mail all registrants on file and (2) having advertised once a week for two consecutive weeks in two newspapers of general circulation; to enforce such rules and regulations

relating to the distribution of commercial fertilizers as he may find necessary to carry into effect the full intent and meaning of this act.

(b) The commissioner shall, before denying the application for a registration or before canceling or revoking any registration, set the matter down for a hearing, and at least ten (10) days prior to the date set for the hearing, shall notify the applicant or distributor in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or distributor an opportunity to be heard in person or by an attorney in reference thereto. The written notice may be served by delivering it personally to the applicant or distributor, or by mailing it by registered mail to the last known business address of the applicant or distributor. The hearing on such charges shall be held before the commissioner at such time and place as the commissioner shall prescribe, and the hearing may be continued from time to time.

History: En. Sec. 12, Ch. 41, L. 1957; amd. Sec. 5, Ch. 43, L. 1963.

previous text of the section as subsection (a); substituted clauses (1) and (2) in subsection (a) for "following due public notice"; and added subsection (b).

Amendment

The 1963 amendment designated the

3-1724. Cancellation of registration. The commissioner is authorized and empowered to cancel the registration of any commercial fertilizer or to refuse to register any commercial fertilizer as herein provided, upon satisfactory evidence that the registrant has used fraudulent or deceptive practices in the evasions or attempted evasions of the provisions of this act or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given the opportunity to appear for a hearing by the commissioner, as provided in section 3-1723 of this act.

History: En. Sec. 13, Ch. 41, L. 1957; amd. Sec. 6, Ch. 43, L. 1963.

remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Amendment

The 1963 amendment added "as provided in section 3-1723 of this act" at the end of the section.

Repealing Clause

Section 8 of Ch. 43, Laws 1963 repealed all laws and parts of laws in conflict or inconsistent therewith.

Separability Clause

Section 7 of Ch. 43, Laws 1963 read "Constitutionality. If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the

Effective Date

Section 9 of Ch. 43, Laws 1963, provided for an effective date of July 1, 1963.

3-1727. Violations — enforcement proceedings — judicial review. (a) * * * [Same as parent volume.]

(b) Any person convicted of violating any of the provisions of this act or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said commissioner or his duly authorized agent in performance of his duty in connection with the provisions of this act, shall be adjudged guilty of a

misdeemeanor and shall be fined not less than three hundred dollars (\$300) or more than five hundred dollars (\$500) for the first violation, and not less than three hundred dollars (\$300) or more than one thousand dollars (\$1,000) for a subsequent violation. In all prosecutions under this act involving the composition of a lot of commercial fertilizer, a certified copy of the official analysis signed by the chemist shall be accepted as prima facie evidence of the composition.

(c), (d) and (e). * * * [Same as parent volume.]

(f) Any person adversely affected by an act, order or ruling made pursuant to the provisions of this act may within forty-five (45) days thereafter bring action in the district court of the county or any county where the alleged violation giving rise to the commissioner's act, order or ruling occurred, for new trial of the issues bearing upon such act, order or ruling, and upon such trial the court may issue and enforce such orders, judgments or decrees as the court may deem proper, just and equitable.

History: En. Sec. 16, Ch. 41, L. 1957; amended Sec. 2, Ch. 55, L. 1965. ishied in the discretion of the court"; and added subsection (f).

Amendment

The 1965 amendment substituted a new subsection (b) for a paragraph reading, "Any person convicted of violating any provision of this act or the rules and regulations issued thereunder shall be pun-

Repealing Clause

Section 3 of Ch. 55, Laws 1965 read "Sections 3-1701, 3-1702, 3-1703, 3-1704, 3-1705, 3-1706, 3-1707, 3-1708, 3-1709, 3-1710 and 3-1711, R. C. M. 1947, are hereby repealed."

CHAPTER 18—HAY DEALERS—BOND AND LICENSE

(Repealed—Section 1, Chapter 81, Laws of 1959)

3-1801 to 3-1807. Repealed.

Repeal

These sections (Secs. 1 to 7, Ch. 204, L. 1937), relating to the licensing of hay

dealers, were repealed by Sec. 1, Ch. 81, Laws 1959, effective March 2, 1959.

CHAPTER 19—MUSTARD SEED—GRADE REQUIREMENTS—PURCHASER'S BOND AND LICENSE

Section 3-1906. Administration.

3-1910. Disposal of funds.

3-1906. Administration. It is hereby made the duty of the commissioner of agriculture of the state of Montana to administer and enforce this act, and for such purpose he is hereby empowered to make all proper necessary rules and regulations, and he is also empowered to and he shall fix the fees for inspection and weighing of mustard seed and such fees shall be a lien upon such mustard seed until paid, and such fees shall be collected by the commissioner of agriculture or his duly authorized representatives and the commissioner of agriculture shall deposit such fees with the state treasurer in the earmarked revenue fund. All operating expenses of this act shall be paid from such fees.

History: En. Sec. 6, Ch. 35, L. 1941; amended Sec. 37, Ch. 147, L. 1963.

Amendment

The 1963 amendment corrected the title of the commissioner of agriculture; sub-

stituted "the earmarked revenue fund" for "a fund known as the 'department of agriculture revolving appropriation fund,' for grain grading, out of which all op-

erating expenses of this act shall be paid" at the end of the first sentence; and added the second sentence.

3-1908. License and bond for persons contracting for purchase, etc.

Construction of Bond

In construing a mustard seed contractor bond, it is necessary to consider this section as part of the bond itself. *Kohles v. St. Paul Fire & Marine Ins. Co.*, — M —, 396 P 2d 724, 726.

Purpose

The purpose of this section is to benefit those farmers who have sold their crops "in advance of harvest." *Kohles v. St. Paul Fire & Marine Ins. Co.*, — M —, 396 P 2d 724, 726.

Recovery on Bond

Plaintiff who sold and delivered mustard seed to company which went bankrupt could not recover on a mustard seed contractor bond where he had the seed on hand and in storage when he contracted for sale. The seed was not planted or harvested in such year nor was it a growing crop during that year. *Kohles v. St. Paul Fire & Marine Ins. Co.*, — M —, 396 P 2d 724, 726.

3-1910. Disposal of funds. All funds accruing from license fees shall be deposited by the commissioner of agriculture with the state treasurer and shall be credited to the general fund.

History: En. Sec. 3, Ch. 64, L. 1939; amd. Sec. 38, Ch. 147, L. 1963.

eral fund" for "revolving fund of the grain division of the department of agriculture, labor and industry."

Amendment

The 1963 amendment substituted "gen-

CHAPTER 20—COMMERCIAL FEEDS—REGULATION

- Section 3-2012. Enforcing official.
 3-2013. Definitions of words and terms.
 3-2014. Registration.
 3-2015. Labeling.
 3-2016. Inspection fees.
 3-2017. Customer-formula feed, special-formula feed, made to order feed, and custom-mixed or custom-milled feeds.
 3-2018. Adulteration.
 3-2019. Misbranding.
 3-2020. Inspection, sampling and analysis.
 3-2021. Rules and regulations and hearings.
 3-2022. Detained commercial feeds.
 3-2023. Penalties.
 3-2024. Publications.

3-2001 to 3-2011. Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 228, L. 1943; Sec. 1, Ch. 42, L. 1951; Secs. 1 to 3, Ch. 127, L. 1951; Sec. 1, Ch. 82, L. 1959; Sec. 1, Ch. 166, L. 1959), relating to regulation of commercial feeds, were re-

pealed by Sec. 15, Ch. 127, Laws 1963, effective January 1, 1964. Sections 39 and 40, Ch. 147, Laws 1963, purported to amend sections 3-2004 and 3-2007; however, under the rule of section 43-515, these amendments were void.

3-2012. Enforcing official. This act shall be administered by the commissioner of agriculture of the state of Montana, hereinafter referred to as the "commissioner."

History: En. Sec. 1, Ch. 127, L. 1963.

Title of Act

An act to provide registration of commercial feeds; defining commercial feed

and other terms; to provide for labeling commercial feeds; to provide for inspection and sampling of commercial feeds and fees therefore; to provide prohibition against distribution of non-registered,

adulterated, or misbranded feeds; to provide for the administration of this act by the commissioner of agriculture and empowering him to make rules and regulations necessary to administration of this act; to provide power in the commissioner to detain, condemn and confiscate feeds being distributed in violation of this act or regulations made thereunder; to pro-

vide penalties for violations of this act or regulations; and to take effect and be in force from and after the first day of January, 1964; providing for a severability clause; and repealing sections 3-2001, 3-2002, 3-2003, 3-2004, 3-2005, 3-2006, 3-2007, 3-2008, 3-2009, 3-2010, 3-2011, R. C. M. 1947.

3-2013. Definitions of words and terms. When used in this act:

(a) The term "person" includes individual, partnership, association, firm and corporation.

(b) The term "distribute" means to offer for sale, sell, or barter commercial feed or customer-formula feed; or to supply, furnish or otherwise provide commercial feed or customer-formula feed to a contract feeder; the term "distributor" means any person who distributes.

(c) The term "sell" or "sale" includes exchange.

(d) The term "commercial feed" includes customer-formula feeds as this term is used in this act and means any material whether simple, mixed, compounded, ground, unground, organic or inorganic, used as a feed for animals other than man, or any material including minerals, vitamins, antibiotics, antioxidants, medicines, drugs, chemicals and other substances, materials, or elements, or parts thereof intended for use or used as an ingredient or component of a mixture of materials, used as a feed for animals other than man except:

(1) The mixed or unmixed whole seeds or meals made directly from and consisting of the entire seeds of corn, wheat, rye, barley, oats, buckwheat, flaxseeds, kaffir, milo and other grain seeds in combination or without molasses and containing no other ingredients.

(2) Unground hay.

(3) Whole or ground straw, stover, silage, cobs, husks, hulls, and wet beet pulp when not mixed with other materials and/or not pelleted.

(4) Individual chemical compounds when not mixed with other materials.

(5) Feeds used solely for household pets.

(6) Materials furnished by the customer-buyer and which were produced by the customer-buyer or acquired by him from a source other than from the person whose services are engaged in the milling, mixing, or processing of a mixture prepared for and in accordance with the specific instructions of the customer-buyer.

(e) The term "feed ingredient" means each of the constituent materials making up a commercial feed.

(f) The term "customer-formula feed" means a mixture of commercial feeds and/or materials each batch of which mixture is mixed according to the specific instructions of the final purchaser, or contract feeder.

(g) The term "brand" means the term, design, trademark, or other specific designation under which an individual commercial feed is distributed in this state.

(h) The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed or customer-formula feed is distributed, or on the invoice or delivery slip with which a commercial feed or customer-formula feed is distributed.

(i) The term "ton" means a net weight of two thousand pounds avoirdupois.

(j) The terms "per cent" or "percentage" means percentage by weight.

(k) The term "official sample" means any sample of feed taken by the chemist of the agricultural experiment station of Montana state college or his deputy and designated as "official" by the chemist.

(l) The term "contract feeder" means a person who, as an independent contractor, feeds commercial feed and/or customer-formula feed to animals pursuant to a contract whereby such commercial feed and/or customer-formula feed is supplied, furnished or otherwise provided to such person and whereby such person's remuneration is determined all or in part by feed consumption, mortality, profits, or amount or quality of product.

(m) The terms "purchaser" and "customer-buyer" mean any person, firm, organization, agency, association, or group who buys or otherwise acquires a commercial feed, customer-formula feed, or custom-mix or custom-mill services.

(n) The term "custom-mix" or "custom-mill" means services only.

(o) An ultimate consumer, means a person who feeds all or part of the feeds which he has received from the distributor.

History: En. Sec. 2, Ch. 127, L. 1963.

3-2014. Registration. (a) Each commercial feed shall be registered before being distributed in this state; provided, however, that customer-formula feeds are exempt from registration. The application for registration shall be submitted to the commissioner on forms furnished by the commissioner and shall be accompanied by a fee of ten dollars (\$10.00) for each commercial feed submitted for registration. Upon the request of the commissioner, each such registration shall be accompanied by a label or other printed matter describing the product, and shall include the information required by subparagraphs (2), (3), (4) and (5), of paragraph (a) of section 3-2015. Upon approval by the commissioner, a copy of the registration shall be furnished to the applicant. Once registered, the registration of a feed shall be renewed by December 31 of each year by payment of an annual fee of ten dollars (\$10.00). Moneys collected under the provisions of this section shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act.

The commissioner may by regulation permit on the registration the alternative listing of ingredients of comparable feeding value, provided that the label for each package shall state the specific ingredients which are in such package.

(b) A distributor shall not be required to register any brand of commercial feed which is already registered under this act by another person.

(c) Changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted by the commissioner provided there is satisfactory evidence that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

(d) The commissioner is empowered to refuse registration of any application not in compliance with the provisions of the act and to cancel any registration subsequently found not to be in compliance with any provisions of this act; provided, however, that no registration shall be refused or cancelled until the registrant shall have been given opportunity to be heard before the commissioner and to amend his application in order to comply with the requirements of this act.

History: En. Sec. 3, Ch. 127, L. 1963;
amd. Sec. 7, Ch. 248, L. 1965.

Amendment

The 1965 amendment substituted "state treasury to the credit of the earmarked revenue fund and shall be used for the

expenses of administering this act" for "general fund of the state" at the end of the first paragraph of subsection (a); and changed the form of the reference at the end of the third sentence of the first paragraph of subsection (a).

3-2015. Labeling. (a) Any commercial feed distributed in this state shall be accompanied by a legible label as approved by the commissioner, bearing the following information:

(1) The net weight.

(2) The name or brand under which the commercial feed is sold.

(3) The guaranteed analysis of the commercial feed, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber. For mineral feeds the list shall include the following if added:

Minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum percentage of iodine (I), and minimum and maximum percentages of salt (NaCl). Other substances or elements, determinable by laboratory methods, may be guaranteed by permission of the commissioner. When any items are guaranteed, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the commissioner. Products sold solely as minerals and/or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat and fiber.

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed, except as the commissioner may by regulation, permit the use of a collective term for a group of ingredients all of which perform the same function.

(5) The name and principal address of the person responsible for distributing the commercial feed.

(b) When a commercial feed is distributed in this state in bags or other containers, the label shall be placed on or affixed to the container; when a commercial feed is distributed in bulk, the label shall accompany delivery and be furnished to the purchaser at the time of delivery.

(c) A customer-formula feed shall be labeled by invoice. The invoice, which is to accompany delivery and be supplied to the purchaser at the time of delivery, shall bear the following information:

- (1) Name and address of the mixer.
- (2) Name and address of the purchaser.
- (3) Date of sale.
- (4) Brand name and number of pounds of each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added.

(d) If a commercial feed or a customer-formula feed contains a non-nutritive substance which is intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease or which is intended to affect the structure or any function of the animal body, the commissioner may require the label to show the amount present, directions for use, and/or warnings against misuse of the feed.

History: En. Sec. 4, Ch. 127, L. 1963.

3-2016. Inspection fees. (a) Each and every person who distributes commercial feed in this state to the ultimate consumer shall pay to the commissioner an inspection fee, based on the gross annual value of feed distributed in this state, according to the following schedule:

Up to and including five hundred dollars (\$500.00) gross annual value of feeds distributed	\$10.00.
Over five hundred dollars (\$500.00) and up to and including one hundred thousand dollars (\$100,000.00) gross annual value of feeds distributed	\$25.00.

Each and every twenty-five thousand dollars (\$25,000.00) additional gross annual value of feeds distributed or fraction thereof, an additional inspection fee of \$10.00; provided, however, that distribution of commercial feeds to manufacturers are hereby exempted if the commercial feeds so distributed are used solely in the manufacture of feeds which are registered. Moneys collected under the provisions of this section shall be deposited in the state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act.

(b) Every person, except as hereinafter provided, who distributes commercial feed in this state shall:

(1) File, not later than the last day of January of each year, a statement setting forth the gross annual value of feeds distributed in this state during the preceding calendar year; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph (a) of this section. When more than one (1) person is involved in the distribution of a commercial feed, the person who distributes to the consumer is responsible for reporting the gross annual value of feeds so distributed and paying the inspection fee.

(2) Keep such records as may be necessary or required by the commissioner to indicate accurately the gross annual value of commercial

feeds distributed in the state, and the commissioner or his authorized agent shall have the right to examine such records to verify statement of gross annual value of feeds distributed. Failure to make an accurate statement of the gross annual value of feeds distributed or to pay the inspection fee or to comply as provided for in this section shall constitute sufficient cause for the cancellation of all registrations on file for the distributor after a hearing as provided in this act, and the distributor shall be subject to the penalties set forth in section 3-2023 of this act.

History: En. Sec. 5, Ch. 127, L. 1963; amd. Sec. 8, Ch. 248, L. 1965.

the second paragraph of subsection (a); and changed the form of the reference at the end of paragraph (b) (2).

Amendment

The 1965 amendment substituted "state treasury to the credit of the earmarked revenue fund and shall be used for the expenses of administering this act" for "general fund of the state" at the end of

Repealing Clause

Section 9 of Ch. 248, Laws 1965 read "Section 1, Chapter 233 [223], Laws of 1963, compiled as section 84-1812(2), R. C. M. 1947, is repealed."

3-2017. Customer-formula feed, special-formula feed, made to order feed, and custom-mixed or custom-milled feeds. (a) The terms "customer-formula feed," "special-formula feed" and "made to order feed" are synonymous and mean a mixture of commercial feed and/or feed material, all or any part of which except for molasses, is furnished by the person or distributor who processes, mixes, mills, or otherwise prepares such mixture, and which is mixed according to the specific instructions of the purchaser. The name and quantity of each item supplied by the purchaser must be shown and properly identified as such on the invoice furnished the purchaser and the portion of such mixture that is furnished by the person or distributor who processes, mixes, mills or otherwise prepares such mixture, shall likewise be shown on the invoice setting forth the information provided for in section 4 (c) and (d) [3-2015 (c), (d)] of this act.

(b) No manufacturer or other person shall mix, mill, process or engage in a practice of mixing, milling, or preparation of a customer-formula feed without complying with the provisions of section 5 [3-2016] of this act.

(c) Under section 2 (d) [3-2013 (d)] of this act, the term "commercial feed" is defined to include customer-formula feed. This definition is hereby re-affirmed, and all of the provisions of this act which apply to commercial feed also apply with equal force and effect upon "customer-formula feed" except where the language specifically exempts "customer-formula feed."

(d) The terms "custom-mixed," "custom-milled," or similar terms means the service rendered a customer or purchaser in the milling, mixing, or processing of materials produced by the customer or purchaser or acquired by him from a source other than from the person who mixes, mills, or processes the mixture, except that the addition of molasses acquired from the person who mixes, mills, or processes the mixture shall not be deemed to render such feed a commercial feed, and are not subject to the provisions of this act.

History: En. Sec. 6, Ch. 127, L. 1963.

3-2018. Adulteration. No person shall distribute an adulterated feed. A commercial feed or customer-formula feed shall be deemed to be adulterated:

(a) If any poisonous, deleterious or non-nutritive ingredient has been added in sufficient amount to render it injurious to health when fed in accordance with directions for use on the label.

(b) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor.

(c) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

(d) If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is stated on the label.

History: En. Sec. 7, Ch. 127, L. 1963.

3-2019. Misbranding. No person shall distribute misbranded feed. A commercial feed or customer-formula feed shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is distributed under the name of another feed.

(c) If it is not labeled as required in section 4 [3-2015] of this act and in regulations prescribed under this act.

(d) If it purports to be or is represented as a feed ingredient, or if it purports to contain or is represented as containing a feed ingredient, unless such feed ingredient conforms to the definition of identity, if any, prescribed by regulation of the commissioner; in adopting of such regulations the commissioner shall give due regard to commonly accepted definitions such as those issued by the association of American feed control officials.

(e) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History: En. Sec. 8, Ch. 127, L. 1963.

3-2020. Inspection, sampling and analysis. (a) At the request of the commissioner of agriculture, the chemist of the agricultural experiment station of Montana state college or his deputy shall sample, inspect, make analysis of and test commercial feeds and customer-formula feeds distributed within this state at such time and place and to such extent as he may deem necessary to determine whether such feeds are in compliance with the provisions of this act. The chemist individually or through his deputy, is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours in order to have access to commercial feeds and customer-formula feeds and to records relating to their distribution.

(b) The method of sampling and analysis shall be those adopted by the chemist from sources such as the journal of the association of official agricultural chemists.

(c) The commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided solely by the official sample as defined in paragraph (k) of section 2 [3-2013 (k)] and obtained and analyzed as provided for in paragraph (b) of section 9 [this section].

(d) When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the results of the analysis shall be forwarded by the chemist to the distributor and purchaser and registrant. Upon request within ten (10) days the chemist shall furnish to the registrant a portion of the official sample concerned. If the registrant fails to agree with the analysis of the chemist, he may request an umpire who shall be one (1) of a list of not less than three (3) public chemists of recognized ability in feed analysis who shall be named by the chemist. Such umpire analysis shall be made at the expense of the registrant requesting the same. The request for an umpire analysis must be made within ten (10) days after receipt of a portion of the official sample, and the results of the umpire analysis must be mailed to the chemist within twenty (20) days from the date the portion of the official sample is received by the registrant of the feed in question. In case the umpire shall agree more closely with the chemist, the figures of the latter shall be considered correct, and in case the umpire shall agree more closely with the figures of the registrant, then the figures of the registrant shall be considered correct.

History: En. Sec. 9, Ch. 127, L. 1963.

3-2021. Rules and regulations and hearings. (a) For the enforcement of this act, the commissioner is authorized to prescribe and, after public hearing; (1) having notified by mail all registrants on file and (2) having advertised once a week for two (2) consecutive weeks in two (2) newspapers of general circulation; to enforce such rules and regulations relating to the distribution of commercial feeds as he may find necessary to carry into effect the full intent and meaning of this act.

(b) The commissioner shall, before denying the application for a registration or before cancelling or revoking any registration, set the matter down for a hearing and at least ten (10) days prior to the date set for the hearing, shall notify the applicant or distributor in writing, which notice shall contain an exact statement of the charges made and the date and place of the hearing and shall afford the applicant or distributor an opportunity to be heard in person, or by an attorney in reference thereto. The written notice may be served by delivering it personally to the applicant or distributor, or by mailing it by registered mail to the last known business address of the applicant or distributor. The hearing on such charges shall be held before the commissioner at such time and place as the commissioner shall prescribe, and the hearing may be continued from time to time.

History: En. Sec. 10, Ch. 127, L. 1963.

3-2022. Detained commercial feeds. (a) "Withdrawal from sale" orders. When the commissioner or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in viola-

tion of any of the provisions of this act or of any of the prescribed regulations under this act, he may issue and enforce a written or printed "withdrawal from sale" order, warning the distributor not to dispose of the lot of feed in any manner until written permission is given by the commissioner or the district court. The commissioner shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within thirty (30) days, the commissioner may begin, or upon request of the distributor shall begin proceedings for condemnation.

(b) Condemnation and confiscation. Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the commissioner to a district court of competent jurisdiction in the area in which said commercial feed is located.

In the event the district court finds the said commercial feed to be in violation of this act and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state; provided, that in no instance shall the disposition of said commercial feed be ordered by the district court without first giving the claimant an opportunity to apply to the district court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this act.

History: En. Sec. 11, Ch. 127, L. 1963.

3-2023. Penalties. (a) Any person convicted of violating any of the provisions of this act or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said commissioner or his duly authorized agent in performance of his duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor and shall be fined not less than three hundred dollars (\$300.00) or more than five hundred dollars (\$500.00) for the first violation, and not less than three hundred dollars (\$300.00) or more than one thousand dollars (\$1,000.00) for a subsequent violation. In all prosecutions under this act involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the chemist shall be accepted as prima facie evidence of the composition.

(b) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the commissioner reports a violation for such prosecution, an opportunity shall be given the distributor and registrant to be heard before the commissioner pursuant to section 10 [3-2021] of this act.

(c) The commissioner is hereby authorized to apply to the district court of the county or any county wherein a violation has occurred, to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule or regulation promulgated under the act notwithstanding the existence of other remedies of law. Said injunction to be issued without bond.

(d) Any person adversely affected by an act, order or ruling made pursuant to the provisions of this act may within forty-five (45) days thereafter bring action in the district court of the county or any county where the alleged violation giving rise to the commissioner's act, order or ruling occurred, for new trial of the issues bearing upon such act, order or ruling, and upon such trial the court may issue and enforce such orders, judgments or decrees as the court may deem proper, just and equitable.

History: En. Sec. 12, Ch. 127, L. 1963.

3-2024. Publications. The commissioner may publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed in the registration and on the label; provided, however, that the information concerning production and use of commercial feeds shall not disclose the operations of any person.

History: En. Sec. 13, Ch. 127, L. 1963.

Separability Clause

Section 14 of Ch. 127, Laws 1963 read "Constitutionality. If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not effect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Repealing Clause

Section 15 of Ch. 127, Laws 1963 read "Repeal. The following sections listed in chapter 20 title 3, Revised Codes of Montana, 1947: 3-2001, 3-2002, 3-2003, 3-2004, 3-2005, 3-2006, 3-2007, 3-2008, 3-2009, 3-2010, 3-2011, pertaining to the distribution of commercial feeds, are hereby repealed."

Effective Date

Section 16 of Ch. 127, Laws 1963 read "Effective date. This act shall take effect and be in force from and after the first day of January, 1964."

CHAPTER 22—POULTRY IMPROVEMENT

Section 3-2201. Powers and duties of commissioner of agriculture.

3-2201.1. Poultry improvement board abolished.

3-2202. Definitions.

3-2203. Board to serve without compensation.

3-2204. Powers and duties.

3-2205. License fees.

3-2207. Disposition of fees.

3-2209. Products to be labeled.

3-2211. May cancel certificates.

3-2212. Violation a misdemeanor.

3-2201. Powers and duties of commissioner of agriculture. The commissioner of agriculture shall have the following powers and duties:

(1) To promote the welfare of the poultry industry in Montana by:
 (a) determining dependable sources from which poultry may be purchased;
 (b) co-operating with other state and federal agencies in programs which will advance, promote, and improve the poultry industry in Montana;
 (c) improving poultry breeding in Montana by certification of the systematic breeding programs of the various hatcheries within the state;
 (d) co-operating with the Montana livestock sanitary board in controlling and eradicat-

ing communicable and infectious diseases of poultry; (e) by systematic inspection of chick dealers, hatcheries and hatching-egg-producers engaged in marketing poultry and poultry products.

(2) To act as the official state agency for Montana in co-operation with the animal and poultry research branch, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan.

The commissioner of agriculture shall appoint a poultry advisory board consisting of the extension specialist on poultry, Montana state college, and two other members who shall be competent and experienced poultrymen, who shall be the owners or operators of commercial poultry hatcheries. The commissioner may call on this board from time to time for advice in administering the poultry improvement program.

History: En. Sec. 1, Ch. 141, L. 1945; amd. Sec. 1, Ch. 46, L. 1957; amd. Sec. 2, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted the preliminary paragraph for a paragraph reading, "There is hereby created a board to be known as the 'Montana Poultry Improvement Board.' This board is created for the following purposes:"; deleted

from the end of subd. (2) a sentence reading, "These purposes are to be liberally construed in order that this board may effectuate programs which will be beneficial to the poultry industry in Montana"; and substituted the final paragraph, establishing the advisory board, for a paragraph relating to the composition of the poultry improvement board, for the text of which see parent volume.

3-2201.1. Poultry improvement board abolished. The Montana poultry improvement board is abolished. All records and property, including unexpended appropriations, and any other moneys of the Montana poultry improvement board are transferred to the department of agriculture.

History: En. Sec. 1, Ch. 59, L. 1961.

Title of Act

An act to abolish the Montana poultry improvement board and transfer the duties of said board to the commissioner of agriculture by amending sections 3-2201,

3-2202, 3-2204, 3-2205, 3-2207, 3-2209, 3-2211 and 3-2212, Revised Codes of Montana, 1947, and by amending section 3-2203, Revised Codes of Montana, 1947, providing that said board shall serve without compensation.

3-2202. Definitions. As used in this act unless the context otherwise requires, "commissioner" means the "commissioner of agriculture."

"Breeder" means any person, firm, corporation or association that breeds, handles or deals in chickens, ducks, geese, turkeys or other domestic fowl.

"Hatcher" means any person who is in the business of hatching the eggs of chickens, ducks, geese, turkeys or other domestic fowl by natural or artificial means.

"Distributor" means any person, who is in the business of distributing, selling, or otherwise disposing of to the public of baby, young or other chickens, ducks, geese, turkeys or other domestic fowl, or eggs for hatching purposes including what is known as "over the counter sale" of baby chicks.

"Hatching-egg-producer" means any person who keeps poultry and from such poultry produces eggs for sale or other disposal for hatching purposes.

"Poultry" means chickens, ducks, geese, turkeys or other domestic fowl.

History: En. Sec. 2, Ch. 141, L. 1945; amd. Sec. 3, Ch. 59, L. 1961.

Amendment

The 1961 amendment in the first paragraph, substituted the definition of "commissioner" for a definition reading "board"

means the state agency created by this act to be known as "The Montana Poultry Improvement Board"; and deleted the former second paragraph reading, "'Person' means any person, firm, corporation or association."

3-2203. Board to serve without compensation. The members of the Montana poultry advisory board shall serve without compensation as such, but the expenses of each, necessarily incurred in the discharge of his duties, shall be paid by the state.

History: En. Sec. 3, Ch. 141, L. 1945; amd. Sec. 10, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted "Mon-

tana poultry advisory board" for "Montana poultry improvement board" and deleted five sentences, for the text of which see parent volume.

3-2204. Powers and duties. The commissioner is authorized and directed to formulate and adopt a plan or plans whereby hatchery, baby chick and/or poult dealers and hatching-egg-producers shall be inspected by employees of the department of agriculture.

No one shall be refused a license or have his license cancelled under this act unless and until he has been given an opportunity to have a hearing on the matter before the commissioner. The person concerned may obtain same by submitting a written request to the commissioner for such hearing. The commissioner, in setting the time for hearing, shall give at least twenty (20) days' notice of said hearing to such person. The commissioner will adopt reasonable rules and regulations governing the conduct of hearings and shall specifically provide that any person requesting such hearing be permitted to be represented by legal counsel.

The commissioner may adopt a standard breeding plan of accreditation and certification sponsored by the United States department of agriculture or any other plan sponsored by said department and to co-operate with said department in matters of poultry improvement and sanitary provisions. The commissioner is further authorized to prescribe and collect fees for inspection and supervision and to prescribe and furnish labels, bands and certificates of accreditation and certification and such other supplies as may be necessary; and to prescribe and collect fees for the same. The commissioner is further authorized to do such other things as he may deem needful and expedient to improve poultry breeding, poultry sanitation, and practices, and to give effect to this act.

History: En. Sec. 4, Ch. 141, L. 1945; amd. Sec. 2, Ch. 46, L. 1957; amd. Sec. 4, Ch. 59, L. 1961.

Amendment

The 1961 amendment deleted three sentences at the beginning of the section providing for employment by the former improvement board of a secretary and executive officer, other employees and legal assistance, for text of which see parent volume; at the end of the first

paragraph substituted "employees of the department of agriculture" for "employees of the board or such other person as may be designated by the board"; substituted "commissioner" for "board" elsewhere throughout the section; substituted "a" for "the" before "standard breeding plan" in the first sentence of the third paragraph and deleted from the end of the first sentence of the third paragraph the words, "and indemnity in case of infectious disease."

3-2205. License fees. No person shall hereafter engage in the business of a hatchery, baby chick and/or poult dealer, salesman, or hatching-egg-producer in Montana, without first securing from the commissioner a license to engage therein, which license shall expire on the first day of January of each year, except in cases of flock owners, and in those cases the license shall expire twelve (12) months after the last official pullorum test was conducted by the livestock sanitary board.

Licenses will be issued only upon payment to said commissioner of such annual fees as may be fixed by said commissioner for each of the said occupations, not exceeding, however, the amounts herein set forth, to-wit: (a) hatcheries—under 50,000 capacity—\$10.00; (b) hatcheries—over 50,000 capacity—\$25.00; (c) baby chick and/or poult dealers and salesmen—\$5.00; (d) breeders, hatching-egg-producers, the sum of \$1.00 up to 200 breeder hens; \$2.50 up to 400 breeder hens; \$5.00 up to 800 breeder hens; \$7.50 up to 1,250 breeder hens; \$10.00 over 1,250 breeder hens per year.

History: En. Sec. 5, Ch. 141, L. 1945; amd. Sec. 3, Ch. 46, L. 1957; amd. Sec. 5, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted "the

livestock sanitary board" for "the board" at the end of the first paragraph; and substituted "commissioner" for "board" or "Montana poultry improvement board" elsewhere throughout the section.

3-2207. Disposition of fees. All fees collected under this act shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 7, Ch. 141, L. 1945; amd. Sec. 6, Ch. 59, L. 1961; amd. Sec. 41, Ch. 147, L. 1963.

Amendments

The 1961 amendment rewrote this section to read: "Ninety-five per cent (95%) of all fees collected under this act shall be

deposited in the state treasury to the credit of the Montana poultry improvement fund, and five per cent (5%) of all such fees shall be deposited in the state treasury to the credit of the general fund."

The 1963 amendment again rewrote the section to read as above.

3-2209. Products to be labeled. All poultry and products sold or shipped under the authority of this act shall be uniformly labeled with designs prescribed and furnished by the commissioner, provided that all labeling for testing, approval and accreditation as to disease shall be first approved by the Montana livestock sanitary board.

History: En. Sec. 9, Ch. 141, L. 1945; amd. Sec. 4, Ch. 46, L. 1957; amd. Sec. 7, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted "commissioner" for "Montana poultry improvement board."

3-2211. May cancel certificates. In his discretion the commissioner may cancel any certificate of accreditation or certification issued under his authority. Likewise the secretary and executive officer of the Montana livestock sanitary board may cancel any certificate of testing, approval or accreditation issued under the authority of his board for violation of this act or any rule or regulation adopted hereunder; and any person, firm, association, partnership or corporation who shall violate any provision of this act or any regulation adopted hereunder shall be guilty of a misdemeanor.

History: En. Sec. 11, Ch. 141, L. 1945; amd. Sec. 8, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted "commissioner" in the first sentence for the

words "secretary and executive officer of the Montana poultry improvement board" substituted "his authority" in the first sentence for "the authority of his board"; and changed the punctuation so as to divide the section into two sentences.

3-2212. Violation a misdemeanor. Violation of any of the provisions of this act shall be a misdemeanor; and as additional or alternative penalties, the commissioner may revoke any license issued, and may by injunction restrain the continuance of any operations covered by this act.

History: En. Sec. 12, Ch. 141, L. 1945; amd. Sec. 5, Ch. 46, L. 1957; amd. Sec. 9, Ch. 59, L. 1961.

Amendment

The 1961 amendment substituted the word "commissioner" for "board."

CHAPTER 23—EGGS AND EGG DEALERS—LICENSE

- Section 3-2301. Egg dealer's license—fee.
 3-2302. Remittance of fees.
 3-2312. Montana state egg seal.
 3-2313. Licensed egg graders.
 3-2315. Disposal of license fees.

3-2301. (2634.1) Egg dealer's license—fee. Every person engaged in the business of buying, selling or dealing in eggs, except those persons or firms who do not buy and sell more than an average of 25 cases of eggs per month for any one year, other than those produced by fowls owned by such persons, shall obtain a license from the commissioner of agriculture for each establishment at which said business is conducted, and shall render to the commissioner of agriculture such reports as may be requested by said commissioner. The fee for such license shall be five dollars (\$5.00) per year for dealers buying eggs for sale at retail. The fee for such license shall be twenty dollars (\$20.00) per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses shall expire March 31st each year after the date of issuance.

History: En. Sec. 1, Ch. 189, L. 1931; amd. Sec. 1, Ch. 151, L. 1939; amd. Sec. 4, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the license fee specified in the second sentence from \$2.00 to \$5.00.

3-2302. (2634.2) Remittance of fees. All license fees shall be remitted to the department of agriculture, dairy division, who shall deposit them in the state treasury to the credit of the general fund.

History: En. Sec. 2, Ch. 189, L. 1931; amd. Sec. 42, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "de-

posit them in the state treasury to the credit of the general fund" for "disburse them for the enforcement of this act as provided in section 3-2310."

3-2312. (2634.12) Montana state egg seal. The commissioner of agriculture is hereby authorized and it shall be his duty to provide and make available a suitable seal to be known as the Montana state egg seal; and he shall have the power from time to time to establish the price at which

said seal shall be sold, but in no case shall the cost of such seal exceed two dollars (\$2.00) per thousand. The proceeds from the sale of said seals shall be expended by the commissioner of agriculture to assist in defraying salaries and expenses incurred in the enforcement of the provisions of this act.

History: En. Sec. 8, Ch. 151, L. 1939; amd. Sec. 1, Ch. 13, L. 1957; amd. Sec. 6, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the maximum cost of the seal specified at the end of the first sentence from 1½ mills per dozen eggs to \$2.00 per thousand.

3-2313. (2634.13) Licensed egg graders. All wholesale and retail dealers who handle more than twenty-five (25) cases of eggs per month supplying eggs to consumers must employ only experienced and licensed graders. The fee for grader's license shall be five dollars (\$5.00) per year. All candlers and graders must pass an examination as required by the commissioner of agriculture. The license shall expire March 31st each year after the date of issuance.

History: En. Sec. 9, Ch. 151, L. 1939; amd. Sec. 1, Ch. 88, L. 1953; amd. Sec. 7, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the license fee specified in the second sentence from \$2.50 to \$5.00.

3-2315. Disposal of license fees. All funds derived from the licenses herein provided and from the sale of the Montana state egg seal shall be paid to the state treasurer and by him credited to the general fund.

History: En. Sec. 11, Ch. 151, L. 1939; amd. Sec. 43, Ch. 147, L. 1963.

eral fund" for "revolving fund of the dairy division of the department of agriculture, labor and industry."

Amendment

The 1963 amendment substituted "gen-

CHAPTER 24—DAIRIES AND DAIRY PRODUCTS—REGULATION OF PRODUCTION AND SALE

Section 3-2407. Keeping of samples.

3-2410. Babcock test—license and operation.

3-2411. Temporary permit to operate Babcock test.

3-2417. Licensing of milk and cream buying stations.

3-2466. Cream grader, weigher and sampler license and examination.

3-2476. "Ice cream" defined—ingredients—standards.

3-2407. (2620.7) Keeping of samples. All persons purchasing milk or cream, for manufacture, sale or shipment, and paying for the same on the basis of the butter fat contained therein as determined by the Babcock test, shall immediately upon receiving such milk or cream, take a representative sample thereof. Such samples shall not be less than two (2) ounces avoirdupois in weight and shall be immediately transferred to a clean and dry sample jar and properly sealed to prevent evaporation or the escape of any of the contents thereof. All samples taken shall be plainly marked or labeled and such mark or label shall be entered on the records of the purchaser to correspond with the name of the person from whom the purchase was made and such record shall also show the weight of the milk or cream. Such samples shall then be protected from the extremes of heat and cold until five (5) o'clock P. M. of the following day,

unless the next day be Sunday or any other holiday in which event the samples shall be held until five (5) o'clock P. M. of the next day following such holiday. During the period that samples are so held, after the making of the test by the person taking same, they shall be opened only in the presence of the commissioner of agriculture, or his authorized agent. Nothing in this section shall prohibit the weighing and sampling of milk from farm bulk milk tanks, or the use of composite samples of milk according to rules and regulations adopted by the commissioner of agriculture, in the best interests of milk producers, consumers and processors and for the protection of their mutual interests.

History: En. Sec. 7, Ch. 93, L. 1929; amd. Sec. 1, Ch. 45, L. 1961.

Amendment

The 1961 amendment deleted a former second sentence, which read: "If any of said milk or cream shall be left on hand at any milk or cream buying or collecting stations, the operator of such stations shall likewise take a representative sample of the same"; deleted from the end of the

present third sentence the words, "if any, left on hand after shipment is made"; deleted "labor and industry" after "commissioner of agriculture" in the present fifth sentence; and added the last sentence.

Repealing Clause

Section 2 of Ch. 45, Laws 1961 repealed all acts and parts of acts in conflict therewith.

3-2410. (2620.10) Babcock test—license and operation. The Babcock test is hereby adopted as the official dairy test for use in the state of Montana. No person shall operate the Babcock test in any creamery, cheese factory, or other place where milk or cream is bought and paid for on the basis of its fat content without first passing the examination and securing the license hereinafter provided for. Any person desiring to operate the Babcock test at any of the places enumerated in this section, shall apply to the department of agriculture, labor and industry for permission to take the Babcock test operator's examination. Such examination shall be given to the applicant by the chief of the dairy division of the department, or his representative. Upon passing said examination to the satisfaction of the examining official, the applicant shall be issued a license authorizing him to operate the Babcock test in the state of Montana for a period of one year. A fee of five dollars (\$5.00) shall be paid for each such original license and a fee of three dollars (\$3.00) for each renewal thereof. All such licenses shall expire on December 31st of each year.

History: En. Sec. 10, Ch. 93, L. 1929; amd. Sec. 2, Ch. 121, L. 1965.

inal license fee specified in the sixth sentence from \$2.00 to \$5.00 and the renewal fee from \$1.00 to \$3.00.

Amendment

The 1965 amendment increased the orig-

3-2411. (2620.11) Temporary permit to operate Babcock test. Any person who shall desire an immediate license to operate the Babcock test before it is reasonably convenient for the department to give the examination provided for in the preceding section, may apply to the department for a temporary permit to operate the Babcock test, stating in his application what training or experience he has had in the use or operation of the same. The department may thereupon in its discretion issue to the applicant a temporary permit to operate the Babcock test,

which shall entitle the holder to operate said test pending the giving of the examination prescribed in the preceding section. Application for such temporary permit shall be accompanied with a fee of five dollars (\$5.00) which shall pay for the first regular Babcock test operator's license thereafter issued to such applicant. If applicant fails in his examination, or discontinues operation of Babcock test before examination can be given, he forfeits fee of five dollars (\$5.00) paid for such license.

History: En. Sec. 11, Ch. 93, L. 1929; **Amendment**
amd. Sec. 1, Ch. 121, L. 1965.

The 1965 amendment increased the license fee specified in the second paragraph from \$2.00 to \$5.00.

3-2417. (2620.17) Licensing of milk and cream buying stations. It shall be unlawful for any person to operate or carry on any milk or cream buying or collection station without first securing from the department an annual license to do so, which said license shall expire on the 31st day of December of each year.

The following schedule of fees shall be charged by the department for all such licenses:

All stations handling less than three thousand pounds (3,000 lbs.) ten dollars (\$10.00); all stations handling three thousand pounds (3,000 lbs.) or over per month and less than six thousand pounds (6,000 lbs.) fifteen dollars (\$15.00); all stations handling six thousand pounds (6,000 lbs.) or more per month, twenty dollars (\$20.00). In computing the annual license to be paid under this section, the highest month's business of such station during the year immediately preceding the application for such license shall determine the amount of the fee.

History: En. Sec. 17, Ch. 93, L. 1929; **Amendment**
amd. Sec. 5, Ch. 121, L. 1965.

The 1965 amendment rewrote the first sentence in the third paragraph so as to increase the license fee for stations handling less than 1,500 pounds of butter fat per month from \$5.00 to \$10.00.

3-2466. (2620.66) Cream grader, weigher and sampler license and examination. No person shall grade, weigh or sample any milk or cream used or to be used in the manufacture of butter, cheese or other dairy products in the state of Montana, without first procuring a license as a cream grader, weigher and sampler from the department of agriculture, and passing such examination therefor as may be provided by said department; provided, however, that temporary permits pending the taking of such examination may be issued by the department for a period of not to exceed thirty (30) days. A fee of five dollars (\$5.00) shall be paid by the applicant for such license or permit and said license shall expire and be renewable on December 31st of each year.

History: En. Sec. 64 by Sec. 10, Ch. 39, L. 1931; amd. Sec. 3, Ch. 121, L. 1965.

Amendment
The 1965 amendment increased the license fee specified in the final sentence from \$2.00 to \$5.00.

3-2476. "Ice cream" defined—ingredients—standards. (a) Ice cream is the food prepared by freezing, while stirring, a pasteurized mix composed of one or more of the optional dairy ingredients specified in subsection (b) of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection (c) of this section, flavored with one or more of the optional flavoring ingredients specified in subsection (d) of this section. Water may be added and one or more of the optional egg ingredients specified in subsection (e) may be used; one or more of the optional stabilizing ingredients specified in subsection (f) may be used; one or more of the optional acidity standardizing ingredients specified in subsection (g) may be used subject to the conditions set forth in subsections (e), (f) and (g), as the case may be.

Harmless coloring may be added. The mix may be seasoned with salt and may be homogenized. The kind and quantity of optional dairy ingredients used, and the content of milk fat and total milk solids shall be such that the weight of milk fat and total milk solids shall be not less than 10% and 20% respectively of the weight of the finished ice cream; except that when one or more of the optional flavoring ingredients specified in subsection (d), (4), (5), (6), (7) or (8) are used, then the weight of milk fat and total milk solids shall be not less than 10% and 20% respectively, except for such reduction in milk fat and in total milk solids as is due to the addition of one or more of the optional ingredients specified in subsection (d), (4), (5), (6), (7) or (8), but in no case shall it contain less than 9% of milk fat nor less than 16% of total milk solids. Ice cream shall contain not less than 1.6 pounds of total food solids per gallon and shall weigh not less than four and one-half ($4\frac{1}{2}$) net pounds per gallon.

(b) to (g). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 172, L. 1953; quired weight of ice cream, as specified at
amd. Sec. 1, Ch. 20, L. 1963. the end of subsection (a), from $4\frac{1}{4}$ to $4\frac{1}{2}$
pounds per gallon.

Amendment

The 1963 amendment increased the re-

CHAPTER 25—MONTANA QUALITY LABEL—USE ON INSPECTED AGRICULTURAL AND FOOD PRODUCTS

Section 3-2503. Procurement and use of labels—information concerning—disposal of moneys.

3-2503. Procurement and use of labels—information concerning—disposal of moneys. (a) The commissioner may cause to be made, printed, or otherwise prepared, from time to time, such quantity of labels, tags, and seals with the Montana quality label printed, lithographed, inscribed, engraved or impressed thereon as will be sufficient to supply the demand therefor; and he may furnish such labels, tags, and seals at reasonable prices to any producer, processor, packer or dresser who has availed himself of the said continuous official inspection service. Nothing in this act, however, shall be construed to preclude the commissioner from permitting, under the rules and regulations by him prescribed, any such

producer, processor, packer or dresser to make or prepare, or to cause to be made or prepared, the labels, tags, or seals to be used upon his own product, or to print, stamp or otherwise placed or cause to be placed the Montana quality label, upon such products or containers thereof which have been subject to continuous inspection; provided that in any case such labels, tags, seals, stamps or other devices shall be of such design as the commissioner, may from time to time determine. (b) The commissioner is further authorized, in cooperation with the United States department of agriculture and/or otherwise, to make use of any available and appropriate means to disseminate information concerning the Montana quality label and the products which may lawfully bear it, and to popularize the use thereof. (c) All moneys derived from the furnishing of said labels, tags, and seals, or from permitting the use in any other manner of the Montana quality label shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 3, Ch. 290, L. 1947;
amd. Sec. 44, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "be deposited in the state treasury to the

credit of the general fund" for "constitute a fund to defray the cost of preparing and furnishing such labels, tags, and seals and the cost of such dissemination and popularization" at the end of subd. (c).

CHAPTER 27—CONTROL OF NOXIOUS RODENT PESTS

Section 3-2704. Purchase and sale of rodent control supplies.

3-2703. Repealed.

Repeal

This section (Sec. 3, Ch. 136, L. 1949), making an appropriation for control of noxious rodent pests, was repealed by Sec. 242, Ch. 147, Laws 1963.

3-2704. Purchase and sale of rodent control supplies. In addition to the expenditures hereinbefore authorized the state of Montana livestock commission is authorized to purchase rodent control supplies, including rodent baits, for the use of cooperating governmental agencies, and counties, associations, corporations, or individuals in the control of noxious rodents and related animals, and to make these supplies and baits available to such co-operators at approximate cost.

History: En. Sec. 4, Ch. 136, L. 1949;
amd. Sec. 105, Ch. 147, L. 1963.

from the end of this section which created a rodent control fund. For previous text, see parent volume.

Amendment

The 1963 amendment deleted a sentence

CHAPTER 28—RURAL REHABILITATION

Section 3-2803. Administration of trust assets.

3-2803. Administration of trust assets. Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under section 3-2802 shall be received by the commissioner of agriculture, and paid by him to the state treasurer for deposit in the federal and private grant clearance fund and used

for expenditure or obligation by the department of agriculture for the purpose of section 3-2802, or for use for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may from time to time be agreed upon between the commissioner of agriculture and the secretary of agriculture of the United States, subject to the applicable provisions of said Public Law 499.

History: En. Sec. 3, Ch. 112, L. 1951;
amd. Sec. 45, Ch. 147, L. 1963.

Compiler's Note

Public Law 499, referred to in this section will be found in the United States Code, tit. 40, secs. 440 to 444.

Amendment

The 1963 amendment substituted "the

federal and private grant clearance fund and used" for "a special fund to be known as the 'Montana Farm Loan Fund' which fund shall be maintained as a revolving fund"; deleted a last sentence reading: "The state treasurer and state auditor are hereby directed to open and maintain accounts upon their respective books for said fund"; and made minor changes in phraseology.

TITLE 4—ALCOHOLIC BEVERAGES

- Chapter 1. State liquor control act of Montana—licensing—sale of alcoholic beverages by state liquor stores, 4-102, 4-104 to 4-106, 4-108, 4-110, 4-112, 4-113, 4-116, 4-134, 4-136 to 4-140, 4-153, 4-159, 4-164, 4-172, 4-173.
2. State liquor control act of Montana (continued)—interdiction and other enforcement provisions—finance—miscellaneous, 4-201, 4-202, 4-229, 4-234.
3. Montana beer act—licensing sale of beer under supervision of state liquor control board, 4-303, 4-317, 4-318, 4-324, 4-329, 4-332, 4-333, 4-341, 4-349.
4. Montana retail liquor license act—sales by licensees of board, 4-403, 4-407.1, 4-409.1, 4-414.
5. Identification cards, 4-501, 4-502.

CHAPTER 1—STATE LIQUOR CONTROL ACT OF MONTANA— LICENSING—SALE OF ALCOHOLIC BEVERAGES BY STATE LIQUOR STORES

- Section 4-102. Definitions.
- 4-104. Montana liquor control board—creation—qualifications—term.
- 4-105. Liquor control board—compensation—meetings.
- 4-106. Appointment of state liquor administrator and assistant—oath of office of board members—quorum.
- 4-108. Salaries of state liquor administrator and other employees—duties of assistant administrator.
- 4-110. State liquor administrator—oath.
- 4-112. Functions, powers and duties of board.
- 4-113. Regulations may be made by board—scope of regulations.
- 4-116. Provisions concerning sale of liquor and beer by vendors.
- 4-134. Druggist allowed liquor—sale of liquor by druggist, when authorized.
- 4-136. Physician allowed liquor—restrictions—violations.
- 4-137. Dentist allowed liquor—restrictions—violations.
- 4-138. Liquor allowed veterinary—restrictions—violations.
- 4-139. Hospitals and sanitariums—restrictions—violations.
- 4-140. Application of act.
- 4-153. Board members not to be interested in liquor sales—unlawful to give or receive gift, commission or remuneration.
- 4-159. Persons not to consume liquor or be intoxicated in public places.
- 4-164. Interdicted persons—presence on liquor store or beer licensee's premises forbidden.
- 4-172. Bottle clubs prohibited.
- 4-173. Violation—penalty—abatement as nuisance.

4-102. (2815.61) **Definitions.** The following words and phrases used in this act shall take the following interpretations:

- (a) to (1). * * * [Same as parent volume.]
- (m). * * * [Same as (n) in parent volume.]
- (n). * * * [Same as (o) in parent volume.]
- (o). * * * [Same as (p) in parent volume.]
- (p). * * * [Same as (q) in parent volume.]
- (q). * * * [Same as (r) in parent volume.]
- (r). * * * [Same as (s) in parent volume.]
- (s). * * * [Same as (t) in parent volume.]
- (t). * * * [Same as (u) in parent volume.]
- (u). * * * [Same as (v) in parent volume.]
- (v). * * * [Same as (w) in parent volume.]

History: En. Sec. 2, Ch. 105, L. 1933; amd. Sec. 1, Ch. 209, L. 1949; amd. Sec. 2, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted a para-

graph (m) which read, "‘Permit’ means a permit for the purchase of liquor issued under this act"; and appropriately redesignated the succeeding paragraphs.

4-104. (2815.63) Montana liquor control board—creation—qualifications—term. The "Montana Liquor Control Board" shall consist of five (5) members not more than three (3) of whom shall be of the same political party to be appointed by the governor, with the advice and consent of the senate, and each of said members shall have been a resident of the state of Montana for a period of five (5) years and a citizen of the United States and of the state of Montana. Each member of the Montana liquor control board shall hold office for a term of four (4) years and until his successor is appointed and qualified, provided, however, that in the appointment of the members of the first board to be appointed, under the terms of this act, one (1) of such members shall be appointed to hold office for a term of two (2) years, and two (2) of such members shall be appointed to hold office for a term of four (4) years, and the two (2) additional members of said board provided under the terms of this act shall be appointed to hold office for a term of four (4) years; and provided, further, that the members of said board may be removed from office at any time by the governor, for cause. The governor shall designate the term of service of each member first appointed, so that the term of one (1) shall end March 1, 1939, and the term of two (2) shall expire March 1, 1941. Each succeeding member shall hold his office for a term of four (4) years and until his successor shall be appointed and shall have qualified. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the 31st day of January during the biennial session of the legislature, next preceding the commencement of the term for which the appointment is made.

History: En. Sec. 4 (part), Ch. 105, L. 1933; amd. Sec. 1 (part), Ch. 30, L. 1937; amd. Sec. 1 (part), Ch. 243, L. 1947; amd. Sec. 1 (part), Ch. 140, L. 1949; amd. Sec. 1 (part), Ch. 183, L. 1951; amd. Sec. 1, Ch. 268, L. 1963.

Amendment

The 1963 amendment increased the size of the board from three to five members; increased the maximum number of members from one political party from two to three; inserted in the second sentence the clause reading, "and the two (2) addi-

tional members of said board provided under the terms of this act shall be appointed to hold office for a term of four (4) years"; deleted a proviso pertaining to the time for nomination of the first members of the board; and made a minor change in phraseology.

Effective Date

Section 2 of Ch. 268, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 15, 1963.

4-105. Liquor control board—compensation—meetings. Each of the members of the Montana liquor control board shall receive, as compensation for his official services, the sum of twenty dollars (\$20) per diem for each day actually engaged in the duties of his office, including his time of travel between his home and place of employment of such duties, provided, however, that the maximum amount each member of commission shall receive for per diem shall not exceed one thousand five hundred

dollars (\$1,500) per annum, together with the traveling expenses while away from home in the performance of the duties of his office. The board shall hold its meetings at the city of Helena or at such other places as may be designated by the board.

History: En. Sec. 4 (part), Ch. 105, L. 1933; amd. Sec. 1 (part), Ch. 30, L. 1937; amd. Sec. 1 (part), Ch. 243, L. 1947; amd. Sec. 1 (part), Ch. 140, L. 1949; amd. Sec. 1 (part), Ch. 183, L. 1951; amd. Sec. 1, Ch. 235, L. 1957; amd. Sec. 1, Ch. 151, L. 1963.

Amendment

The 1963 amendment increased the compensation of board members from \$15 to \$20 per diem.

4-106. Appointment of state liquor administrator and assistant—oath of office of board members—quorum. The board shall choose one (1) of its own members as chairman, and shall appoint a state liquor administrator, who shall not be a member of the board and who shall be ex officio the secretary of the board. The board may also, in its discretion, appoint an assistant state liquor administrator and other employees. Each member of the board shall take and file the constitutional oath of office before entering the performance of his duties. A majority of the members of the board shall constitute a quorum for the transaction of business.

History: En. Sec. 4 (part), Ch. 105, L. 1933; amd. Sec. 1 (part), Ch. 30, L. 1937; amd. Sec. 1 (part), Ch. 243, L. 1947; amd. Sec. 1 (part), Ch. 140, L. 1949; amd. Sec. 1 (part), Ch. 183, L. 1951; amd. Sec. 11, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted from the end of the third sentence a clause reading, "and he shall give bond conditioned for the faithful performance of his duties, in the sum of twenty-five thousand dollars (\$25,000.00)."

4-108. (2815.63) Salaries of state liquor administrator and other employees—duties of assistant administrator. The board shall fix the following salaries of its employees at such sums as it deems advisable, to-wit: The salary of the state liquor administrator in a sum not exceeding nine thousand dollars (\$9,000) per year; the salary of the assistant state liquor administrator in a sum not exceeding seven thousand two hundred dollars (\$7,200) per annum; the salaries of the supervisors of the accounting department, the data processing department and the license department in a sum not exceeding six thousand six hundred dollars (\$6,600) per annum each; the salary of the supervisor of the warehouse department in a sum not exceeding six thousand dollars (\$6,000) per annum; the salaries of the purchasing agent, the traffic manager, the assistant supervisor of the data processing department, the assistant supervisor of the accounting department, store auditors and field inspectors in a sum not exceeding five thousand seven hundred sixty dollars (\$5,760) per annum each; the salary of a vendor of a "Class A" store in a sum not exceeding five thousand eight hundred seventy-five dollars (\$5,875) per annum; the salary of one (1) assistant vendor of a "Class A" store in a sum not exceeding five thousand two hundred fifty dollars (\$5,250) per annum; the salary of any other employee of a "Class A" store in a sum not exceeding four thousand nine hundred fifty dollars (\$4,950) per annum; the salary of a vendor of a "Class B" store in a sum not exceeding five thousand dollars (\$5,000) per annum; the salary of an assistant vendor and any other employee of a "Class B" store in a sum not exceeding four thousand

one hundred twenty-five dollars (\$4,125) per annum; the salary or compensation of a vendor of a "Class C" store in a sum not exceeding four thousand five hundred dollars (\$4,500) per annum; the salary of an assistant vendor and any other employee of a "Class C" store in a sum not exceeding the sum of three thousand seven hundred fifty dollars (\$3,750) per annum; the salary of any other employee of the board in the sum not exceeding six thousand dollars (\$6,000) per year. The volume of the individual store sales shall be taken into consideration in fixing the salary of store vendors, assistant vendors and employees.

The assistant state liquor administrator shall exercise such powers and perform such duties as the board may prescribe.

History: En. Sec. 4 (part), Ch. 105, L. 1933; amd. Sec. 1 (part), Ch. 30, L. 1937; amd. Sec. 1 (part), Ch. 243, L. 1947; amd. Sec. 1 (part), Ch. 140, L. 1949; Sec. 1 (part), Ch. 183, L. 1951; amd. Sec. 2, Ch. 235, L. 1957; amd. Sec. 2, Ch. 151, L. 1963.

Amendment

The 1963 amendment increased the maximum salary of the state liquor administrator from \$7,000 to \$9,000 and that of the assistant state liquor administrator from \$5,600 to \$7,200; changed the chief accountant's title to supervisor of the accounting department and increased his maximum salary from \$5,500 to \$6,600; changed the I. B. M. office superintendent's title to supervisor of the data processing department and increased his maximum salary from \$4,900 to \$6,600; inserted provisions for salaries of the supervisor of the license department, the supervisor of the warehouse department, the purchasing agent, the traffic manager, the assistant supervisor of the data processing department, the assistant supervisor

of the accounting department, store auditors, and field inspectors; and increased the maximum salaries of vendors in Class A stores from \$4,700 to \$5,875, those of assistant vendors in Class A stores from \$4,200 to \$5,250, those of other employees of Class A stores from \$3,960 to \$4,950, those of vendors in Class B stores from \$4,000 to \$5,000, those of assistant vendors and other employees in Class B stores from \$3,300 to \$4,125, those of vendors in Class C stores from \$3,600 to \$4,500, those of assistant vendors and other employees of Class C stores from \$3,000 to \$3,750, and those of other employees of the board from \$4,800 to \$6,000.

Repealing Clause

Section 3 of Ch. 151, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 151, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

4-110. (2815.65) State liquor administrator—oath. The state liquor administrator, before entering upon the performance of his duties, shall take and file the constitutional oath of office and he shall devote his whole time and attention to the administration of the State Liquor Control Act of Montana and the Montana Beer Act and shall receive no other compensation from any source whatsoever, or follow no other occupation.

History: En. Sec. 6, Ch. 105, L. 1933; amd. Sec. 2, Ch. 30, L. 1937; amd. Sec. 12, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted "and he shall give bond in such sum as the board may determine" after "constitutional oath of office."

4-112. (2815.67) Functions, powers and duties of board. The board shall have the following functions, duties and powers:

- (a) to (c). * * * [Same as parent volume.]
- (d). * * * [Same as (e) in parent volume.]
- (e). * * * [Same as (f) in parent volume.]
- (f). * * * [Same as (g) in parent volume.]

(g). * * * [Same as (i) in parent volume.]

(h). * * * [Same as (j) in parent volume.]

(i). * * * [Same as (k) in parent volume.]

History: En. Sec. 8, Ch. 105, L. 1933; amd. Sec. 3, Ch. 154, L. 1965.

or cancel permits for the purchase of liquor" and a paragraph (h) which read, "To appoint officials to issue and grant permits under this act"; and appropriately redesignated the succeeding paragraphs.

Amendment

The 1965 amendment deleted a paragraph (d) which read, "To grant, refuse

4-113. (2815.68) Regulations may be made by board—scope of regulations. (1). * * * [Same as parent volume.]

(2) Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared the power of the board to make regulations in the manner set out in that subsection shall extend to and include the following:

(a) to (f). * * * [Same as parent volume.]

(g) Prescribing an official serially numbered seal which shall be attached to every package of liquor sold or sealed under this act;

(h). * * * [Same as parent volume.]

(i). * * * [Same as (j) in parent volume.]

(j) Prescribing the form of records of purchase of liquor, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(k). * * * [Same as (l) in parent volume.]

(l). * * * [Same as (n) in parent volume.]

(m). * * * [Same as (o) in parent volume.]

(n). * * * [Same as (p) in parent volume.]

(o). * * * [Same as (q) in parent volume.]

(p). * * * [Same as (r) in parent volume.]

(q). * * * [Same as (s) in parent volume.]

(r). * * * [Same as (t) in parent volume.]

(s). * * * [Same as (u) in parent volume.]

(3). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 105, L. 1933; amd. Sec. 1, Ch. 43, L. 1965; amd. Sec. 1, Ch. 154, L. 1965.

Compiler's Note

This section was amended twice in 1965, once by ch. 43 and once by ch. 154. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

Chapter 43, Laws of 1965, substituted "an official serially numbered seal which

shall be attached" in paragraph (2)(g) for "an official seal and official labels and determining the manner in which such seal or label shall be attached"; and deleted from the end of paragraph (2)(g) the words "including the prescribing of different official seals or different official labels for different classes, varieties and brands of liquor."

Chapter 154, Laws of 1965, deleted former paragraphs (i) and (m) of subsection (2), for text of which see parent volume; appropriately redesignated the succeeding paragraphs of subsection (2); and deleted "by the holders of permits" after "purchase of liquor" in present paragraph (2)(j) (former paragraph (2)(k)).

4-116. (2815.71) Provisions concerning sale of liquor and beer by vendors. (1) A vendor may sell to any person such liquor as that person

is entitled to purchase in conformity with the provisions of this act and the regulations made thereunder.

(2) Before the vendor shall make delivery of any liquor, other than beer, sold pursuant to this section, he shall—

(a) have first received an order in writing, dated and signed by the purchaser, setting out the kind and quantity of the liquor ordered; and

(b) have been paid the purchase price in cash.

(3) A vendor may, in accordance with this act, and the regulations made thereunder, sell and deliver beer provided that no delivery of beer sold under the provisions of this section shall take place until the purchaser has paid for the same in the manner prescribed in the regulations under this act.

History: En. Sec. 12, Ch. 105, L. 1933; amd. Sec. 4, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted "who is the holder of a subsisting permit" after "sell to any person" in subsection (1); deleted "under such permit" after "entitled to purchase" in subsection (1); deleted "the number of his permit and" after "setting out" in paragraph (2) (a);

deleted a paragraph (2) (b) reading, "have received from the purchaser his permit and shall have endorsed thereon the kind and quantity of the liquor sold and the date of sale; and"; and deleted "who is the holder of a subsisting permit entitling him to purchase beer under this act, and to a licensee who is the holder of a subsisting license under this act to keep and sell beer" after "deliver beer to any person" in subsection (3).

4-123 to 4-132. (2815.77 to 2815.86) Repealed.

Repeal

These sections (Secs. 18 to 27, Ch. 105, L. 1933; Sec. 1, Ch. 3, L. 1937; Sec. 1,

Ch. 112, L. 1955), relating to permits for the purchase of liquor, were repealed by Sec. 17, Ch. 154, Laws 1965.

4-134. (2815.88) Druggist allowed liquor—sale of liquor by druggist, when authorized. Any druggist may have in his possession alcohol purchased by him pursuant to this act; such alcohol to be used solely in connection with the business of the druggist in compounding medicines or as a solvent or preservative.

Provided that in a municipality where there is no state liquor store a druggist may keep for sale and may sell for strictly medicinal purposes liquor purchased by him pursuant to this act, but no sale of liquor shall be made by such last mentioned druggist except upon a bona fide prescription signed by a physician and no more than one sale and one delivery shall be made on any one prescription.

History: En. Sec. 29, Ch. 105, L. 1933; amd. Sec. 5, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted "under a

special permit" after "alcohol purchased by him" in the first paragraph and again after "liquor purchased by him" in the second paragraph; and made a minor change in punctuation.

4-136. (2815.90) Physician allowed liquor — restrictions — violations.

(1) Any physician who deems liquor necessary for the health of a patient of his whom he has seen or visited professionally may give to such patient a prescription therefor in the prescribed form, signed by the physician, or the physician may administer the liquor to the patient, for which purpose the physician shall administer only such liquor as was purchased by him pursuant to this act, and may charge for the liquor so administered;

but no prescription shall be given nor shall liquor be administered by a physician except to a bona fide patient in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed or administered is necessary.

(2). * * * [Same as parent volume.]

History: En. Sec. 31, Ch. 105, L. 1933; **Amendment**
amd. Sec. 6, Ch. 154, L. 1965.

The 1965 amendment deleted "under special permit" after "was purchased by him" in subsection (1).

4-137. (2815.91) Dentist allowed liquor — restrictions — violations.
Any dentist who deems it necessary that any patient being then under treatment by him should be supplied with liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor purchased by him pursuant to this act, and may charge for the liquor so administered; but no liquor shall be administered by a dentist except to a bona fide patient in case of actual need, and every dentist who administers liquor in evasion or violation of this act shall be guilty of an offense against this act.

History: En. Sec. 32, Ch. 105, L. 1933; **Amendment**
amd. Sec. 7, Ch. 154, L. 1965.

The 1965 amendment deleted "under special permit" after "liquor purchased by him."

4-138. (2815.92) Liquor allowed veterinary—restrictions—violations.
Any veterinary who deems it necessary may in the course of his practice administer or cause to be administered liquor to any dumb animal, and for that purpose the veterinary shall administer or cause to be administered liquor purchased by him pursuant to this act, and may charge for the liquor so administered or caused to be administered; but no veterinary shall give to or permit any person to consume as a beverage any liquor so purchased, and every veterinary who evades or violates or suffers or permits any evasion of this section shall be guilty of an offense against this act.

History: En. Sec. 33, Ch. 105, L. 1933;
amd. Sec. 8, Ch. 154, L. 1965.

special permit" after "liquor purchased by him" in the first part of the section; and deleted "himself consume, nor shall he" after "no veterinary shall" in the latter part of the section.

Amendment

The 1965 amendment deleted "under

4-139. (2815.93) Hospitals and sanitariums—restrictions—violations.
Any person in charge of an institution regularly conducted as a hospital or sanitarium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may administer liquor purchased by him to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medical purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in cases of actual need, and every person in charge of an institution who administers liquor in evasion or violation of this act shall be guilty of an offense against this act:

History: En. Sec. 34, Ch. 105, L. 1933; holds a special permit under this act for
amd. Sec. 9, Ch. 154, L. 1965. that purpose" before "administer liquor
purchased by him"; and deleted "under his
special permit" after "administer liquor
purchased by him."

Amendment

The 1965 amendment deleted "if he

4-140. (2815.94) Application of act. (1) Nothing in this act shall prevent any brewer, distiller, or other person duly licensed, under the provisions of any statute of the United States of America, for the manufacture of liquor, from having or keeping liquor in a place and in the manner authorized by or under any such statute.

It is hereby declared to be the policy of the state of Montana that the manufacture of liquor including the distillation, rectification, bottling and processing as these terms are defined under the provisions of the laws of the United States shall be authorized and permitted by any brewer, distiller, rectifier or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States provided the Montana state liquor control board may make such regulations as the board deem necessary with respect thereto, not inconsistent with this act, or with the statutes of the United States of America or regulations issued under the provisions of the federal alcohol administration act, title 27, United States Code sections 201 through 212 inclusive or regulations issued under the provisions of the Internal Revenue Code, title 26, United States Code, sections 5001 through section 5693, inclusive.

(2). * * * [Same as parent volume.]

History: En. Sec. 35, Ch. 105, L. 1933; all acts and parts of acts in conflict there-
amd. Sec. 1, Ch. 67, L. 1965. with.

Amendment

The 1965 amendment added the second paragraph to subsection (1).

Repealing Clause

Section 2 of Ch. 67, Laws 1965 repealed

Effective Date

Section 3 of Ch. 67, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

4-153. (2815.107) Board members not to be interested in liquor sales—unlawful to give or receive gift, commission or remuneration. (1) to (3). * * * [Same as parent volume.]

(4) The prohibition contained in subsection (3) of this section does not prohibit the board from receiving samples of liquor for the purpose of quality determination. The board shall maintain written records of all samples received; such records shall show the brand name, amount, from whom received, and the name of the person to whom the sample was delivered or other final disposition.

History: En. Sec. 48, Ch. 105, L. 1933; amd. Sec. 1, Ch. 144, L. 1965.

Amendment

The 1965 amendment added subsection (4).

4-157. (2815.111) Repealed.

Repeal

This section (Sec. 52, Ch. 105, L. 1933) prohibiting the consumption of liquor ex-

cept from an officially sealed package purchased under permit, was repealed by Sec. 17, Ch. 154, Laws 1965.

4-159. (2815.113) Persons not to consume liquor or be intoxicated in public places. (1) Except in the case of liquor purchased and consumed in accordance with the beer license or a special license for a purpose permitting its consumption in a public place, no person shall consume liquor in a public place.

(2) No person shall be in an intoxicated condition in a public place.

History: En. Sec. 54, Ch. 105, L. 1933; amd. Sec. 10, Ch. 154, L. 1965.

Amendment

The 1965 amendment substituted "special license" for "special permit" in subsection (1).

Liability of Tavern Keeper

Subd. (2) of this section does not furnish the basis for holding a tavern keeper liable for injury from the acts of an intoxicated patron in the absence of evidence that the tavern keeper knew of the intoxication. *Nevin v. Carlasco*, 139 M 512, 365 P 2d 637, 639.

4-162. (2815.116) Repealed.

Repeal

This section (Sec. 57, Ch. 105, L. 1933), prohibiting the supply of liquor to a per-

son whose permit has been suspended or cancelled, was repealed by Sec. 17, Ch. 154, Laws 1965.

4-164. (2815.118) Interdicted persons—presence on liquor store or beer licensee's premises forbidden. Any interdicted person who enters or is found upon the premises of any state liquor store, or the premises for which a beer license has been granted, shall be guilty of an offense against this act.

History: En. Sec. 59, Ch. 105, L. 1933; amd. Sec. 11, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted "No permit shall be issued to any interdicted per-

son, and" at the beginning of the section; substituted "Any" for "every" at the beginning of the section; and deleted "who makes application for a permit, or" after "interdicted person."

4-165, 4-166. (2815.119, 2815.120) Repealed.

Repeal

These sections (Secs. 60, 61, Ch. 105, L. 1933), relating to permit applications and liquor purchases by persons whose

permits have been suspended or cancelled, were repealed by Sec. 17, Ch. 154, Laws 1965.

4-167. (2815.121) Drunkenness when and where, etc.

Civil Liability

This section does not furnish the basis for holding a tavern keeper liable for injury from the acts of an intoxicated

patron in the absence of evidence that the tavern keeper knew of the intoxication. *Nevin v. Carlasco*, 139 M 512, 365 P 2d 637, 639.

4-168. (2815.122) Repealed.

Repeal

This section (Sec. 63, Ch. 105, L. 1933), relating to the possession and use of liquor

by permit holders or persons not holding permits, was repealed by Sec. 17, Ch. 154, Laws 1965.

4-172. Bottle clubs prohibited. The operation of beer or liquor or alcoholic beverage bottle clubs is hereby prohibited by any person, persons, partnership, firm, corporation or association. A bottle club is hereby defined as any person, persons, partnership, firm, corporation or association maintaining premises, not licensed for the sale of beer or liquor, for a fee or other consideration, including the sale of food, mixes,

ice, or any other fluids for alcoholic liquors, or otherwise furnishing premises for such purposes and from which they would derive revenue.

History: En. Sec. 1, Ch. 200, L. 1959; amd. Sec. 1, Ch. 109, L. 1963.

change in phraseology in the first sentence and added the second sentence.

Title of Act

An act to prohibit any person, persons, partnership, firm, corporation or association from operating a beer, liquor or other alcoholic beverage, bottle club, and providing a penalty therefor; repealing all acts and parts of acts in conflict herewith; and providing for an effective date.

Repealing Clause

Section 2 of Ch. 109, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 109, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

Amendment

The 1963 amendment made a minor

4-173. Violation—penalty—abatement as nuisance. A violation of this act shall be deemed a nuisance and may be abated, and any person, persons, partnership, firm, corporation or association found guilty of violating this section shall be punished by fine of not more than five hundred dollars (\$500.00), or by six (6) months in the county jail, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 200, L. 1959.

Effective Date

Section 4 of Ch. 200, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

Repealing Clause

Section 3 of Ch. 200, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 2—STATE LIQUOR CONTROL ACT OF MONTANA (continued)—
INTERDICTION AND OTHER ENFORCEMENT PROVISIONS—
FINANCE—MISCELLANEOUS

Section 4-201. Interdiction—order of—effect—disposal of liquor of interdicted person.

4-202. Filing of order of interdiction.

4-229. Disposition of money received.

4-234. Officers may administer oaths.

4-201. (2815.126) Interdiction—order of—effect—disposal of liquor of interdicted person. (1) Where it is made to appear to the satisfaction of any court that any person, resident or sojourning within the state, by excessive drinking of liquor, misspends, wastes, or lessens his estate, or injures his health, or endangers or interrupts the peace and happiness of his family, the court may make an order of interdiction prohibiting the sale of liquor to him until further order; and the court shall cause the order to be forthwith filed with the board.

(2). * * * [Same as parent volume.]

History: En. Sec. 67, Ch. 105, L. 1933; amd. Sec. 12, Ch. 154, L. 1965.

that person, and" after "make an order of interdiction" in subsection (1).

Amendment

The 1965 amendment deleted "directing the cancellation of any permit held by

References

Cited in State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-202. (2815.127) Filing of order of interdiction. Upon receipt of the order of interdiction, the board shall notify the interdicted person and all

vendors, and such other persons as may be provided by the regulations, of the order of interdiction so made and filed prohibiting the sale of liquor to the interdicted person.

History: En. Sec. 68, Ch. 105, L. 1933; amd. Sec. 13, Ch. 154, L. 1965. deleted "of the cancellation of the permit, and" after "provided by the regulations."

Amendment

The 1965 amendment deleted "cancel any permit held by the interdicted person, and shall" after "the board shall"; and

References

Cited in State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-203. (2815.128) Revocation of order of interdiction—restoration, etc.

References

Cited in State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-204. (2815.129) Application and setting aside order, etc.

References

Cited in State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-205. (2815.130) Penalty for violations of act.

Jurisdiction of Prosecutions

The provisions of the retail liquor license act (sections 4-401 to 4-441) control with respect to prosecution of a licensee for making a sale to an interdicted person

and a justice court had jurisdiction to act upon a complaint charging defendant with a sale of liquor to an interdicted person. State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-229. (2815.154) Disposition of money received. All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the board. The board is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The board shall transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the board shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the board solely from funds derived from the operation of state liquor stores. The board shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of state liquor stores.

History: En. Sec. 94, Ch. 105, L. 1933; amd. Sec. 1, Ch. 54, L. 1939; amd. Sec. 211, Ch. 147, L. 1963.

Amendment

The 1963 amendment completely rewrote this section. For previous text, see parent volume.

4-231. (2815.156) Repealed.

Repeal

This section (Sec. 96, Ch. 105, L. 1933), relating to a reserve fund to be created

from the profits, was repealed by Sec. 242, Ch. 147, Laws 1963.

4-234. (2815.160) Officers may administer oaths. Every vendor may administer any oath and take and receive any affidavit or declaration required under this act or the regulations.

History: En. Sec. 100, Ch. 105, L. 1933;
amd. Sec. 14, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted "and every official authorized by the board to issue permits under this act" after "Every vendor."

4-240. License tax on liquor—amount—distribution of proceeds.

References

Cited in *Hill v. Billings*, 134 M 282, 328
P 2d 1112, 1116.

**CHAPTER 3—MONTANA BEER ACT—LICENSING SALE OF BEER UNDER
SUPERVISION OF STATE LIQUOR CONTROL BOARD**

Section 4-303. Closing hours for licensed retail beer establishments.

4-317. Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.

4-318. Wholesalers' licenses—application for and issuance—sub-warehouse—imported beer handled through warehouse or sub-warehouse.

4-324. Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons.

4-329. Sale of beer by retailer for consumption off premises.

4-332. Special permits to sell beer—application and issuance—fee.

4-333. Issuance of retail beer licenses—limit on number of—off-premises beer licenses—lapse and cancellation.

4-341. Fees for licenses—expiration dates—regulation by cities and towns.

4-349. Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified—brewers not to be interested in retailer financially.

4-303. Closing hours for licensed retail beer establishments. Hereafter all licensed establishments wherein beer as defined by subsection (b) of section 4-302, is sold, offered for sale or given away at retail shall be closed during the following hours:

(a) Sunday from two A. M. to one P. M.;

(b) On any other day between two A. M. and eight A. M.;

(c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not upon the day of any other election; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of beer, then the sale of beer is prohibited within the limits of any such city or town during the times such sale is prohibited by this act and in addition thereto during the hours that it is prohibited by such ordinance.

History: En. Sec. 1, Ch. 161, L. 1943;
amd. Sec. 1, Ch. 162, L. 1959.

Amendment

The 1959 amendment in subd. (c) inserted the word "biennial"; inserted the

words "election at which state and national officers are elected"; inserted the words "but not upon the day of any other election" and deleted a provision calling for the closing of establishments at special bond elections.

4-317. (2815.22) Licenses of brewers—persons to whom brewers may sell beer—barrelage tax. (1) Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section 4-341 and upon presenting satisfactory evidence to the board as required by section 4-310, shall be licensed by the board in accordance with the provisions of this

act and such regulations as may be prescribed by the board, to sell and deliver:

- (a) Beer to a vendor;
- (b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or
- (c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

(2) In addition to the annual license tax imposed by section 4-341, a tax of one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the board under the provisions of section 4-311.

History: En. Sec. 13, Ch. 106, L. 1933; **Amendment**
 amd. Sec. 4, Ch. 46, Ex. L. 1933; amd. The 1959 amendment increased the bar-
 Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. relage tax from \$1.00 to \$1.50 per barrel.
 135, L. 1959.

4-318. (2815.23) Wholesalers' licenses—application for and issuance—sub-warehouse—imported beer handled through warehouse or sub-warehouse. Any person desiring to sell and distribute beer as a wholesaler under the provisions of this act shall apply to the board for a license to do so and tender with his application the license fee hereinafter provided for and the board is hereby empowered, authorized and directed to issue one [1] wholesale license for every thirty (30) retail beer licenses figured on the number of retail beer licenses issued in the state to qualified applicants in accordance with the provisions of this act; such license shall be at all times prominently displayed in the place of business of such wholesaler.

To qualify for a wholesaler's license the applicant shall have been a resident of Montana for a period of five (5) years immediately prior to making application, or if said applicant is a Montana corporation said corporation shall have been organized for a period of five (5) years immediately prior to making application; provided, however, an individual or partnership which has been licensed as a beer wholesaler may, upon incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership; or if applicant is a foreign corporation said corporation shall have been authorized to do business in Montana for a period of five (5) years immediately prior to making application; and said applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler shall be entitled to only one (1) wholesale license, which license shall be issued for his principal place of business in Montana; a duplicate license may be issued for one (1) sub-warehouse only in Montana for each wholesale

licensee, which said duplicate license shall at all times be prominently displayed at said sub-warehouse; licenses already issued which are in excess of said limitations and which are of issue on the date of the passage and approval of this act, shall be renewable, but no new wholesale beer licenses shall be issued until the number of licenses shall be reduced to within the above limitation.

All beer manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped to a licensed wholesaler, and by him unloaded into his warehouse in Montana or sub-warehouse in Montana; said wholesaler shall distribute said beer from such warehouse or sub-warehouse; said wholesaler shall keep records at his principal place of business of all beer including the name or kind received, on hand, sold and distributed; said records may at all times be inspected by any member or representative of the board; any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the board and may be confiscated in the manner as provided for the confiscation of intoxicating liquor.

History: En. Sec. 14, Ch. 106, L. 1933; amd. Sec. 5, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 246, L. 1947; amd. Sec. 5, Ch. 166, L. 1951; amd. Sec. 1, Ch. 222, L. 1965.

Amendment

The 1965 amendment inserted in the first sentence of the second paragraph the proviso reading, "provided, however, an individual or partnership which has been licensed as a beer wholesaler may, upon

incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof is held by said individual or the members of said partnership."

Repealing Clause

Section 2 of Ch. 222, Laws 1965 repealed all acts and parts of acts in conflict therewith.

4-324. (2815.29) Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons. A tax of one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the board in determining the amount of tax due, as herein provided for.

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 135, L. 1959.

Amendment

The 1959 amendment increased the barrelage tax from \$1.00 to \$1.50 per barrel.

Repealing Clause

Section 3 of Ch. 135, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 135, Laws 1959 read "This act shall be in full force and effect from and after May 1st, 1959."

4-329. (2815.32) Sale of beer by retailer for consumption off premises. It shall be lawful for such retailer to sell or furnish beer to the public with intent that such beer shall be taken away from the premises of such retailer for consumption off the premises of such retailer.

History: En. Sec. 30, Ch. 106, L. 1933; amd. Sec. 10, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 177, L. 1961.

Repealing Clause

Section 2 of Ch. 177, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1961 amendment at end of section deleted the words "and in quantities not to exceed five (5) gallons."

4-332. (2815.35) Special permits to sell beer—application and issuance—fee. (1) Any fair association or corporation maintaining or operating a place for the exhibition of livestock or agricultural or horticultural products, or for the exhibition of races or rodeos, charging an admission fee thereto, shall in the discretion of the board be entitled to a special permit to sell beer to the patrons of such exhibition to be consumed within the exhibition enclosure.

The application of any such association or corporation shall describe the location of such enclosure wherein such exhibition is held, the nature of such exhibition, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided.

The permit issued to such fair association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when exhibitions for which a fee is charged are being held upon such grounds and during the exhibition period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of ten dollars (\$10.00) per day for each day beer is to be sold, or sold but in no event less than the sum of twenty-five dollars (\$25.00), hereby fixed as the minimum fee for such permit.

(2) Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the board, without notice or hearing as provided in section 4-407.1, be entitled to a special permit to sell beer at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of five dollars (\$5.00).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the board shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year.

History: En. Sec. 13, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 235, L. 1963.

Amendment

The 1963 amendment designated the previous text as subsection (1) and added subsection (2).

4-333. (2815.36) Issuance of retail beer licenses—limit on number of—off-premises beer licenses—lapse and cancellation. (1)(a) and (b). * * *

[Same as parent volume.]

(2) A retail license to sell beer in the original packages for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by a majority of the board as a fit and proper person, firm or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the board may issue shall not be limited by the provisions of subsection (1) of this section, but shall be determined by the board in the exercise of its sound discretion, and the board may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause. The annual license fee for a license to sell beer at retail for off-premises consumption shall be the same as for a retail beer license.

(3) From and after February 1, 1949, any retail license issued pursuant to this act (including any retail license to sell beer for off-premises consumption), not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

History: En. Sec. 14, Ch. 46, Ex. L. 1933; amd. Sec. 1, Ch. 225, L. 1947; amd. Sec. 1, Ch. 165, L. 1949; amd. Sec. 1, Ch. 55, L. 1955; amd. Sec. 1, Ch. 205, L. 1959; amd. Sec. 1, Ch. 271, L. 1965.

Amendments

The 1959 amendment added the proviso at the end of subsection (3).

The 1965 amendment added "and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy" at the end of the first sentence of subsection (2).

Saving Clause

Section 2 of Ch. 271, Laws 1965 read "Retail licenses to sell beer in the original packages for off-premise consumption

of issue on the date of passage and approval of this act shall be renewable, but no new licenses shall be issued except as provided by this act."

Repealing Clause

Section 2 of Ch. 205, Laws 1959, repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 205, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

Section 3 of Ch. 271, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

4-341. (2815.44) Fees for licenses — expiration dates — regulation by cities and towns. Each licensee, under the provisions of this act, shall pay an annual license fee as follows:

Each "brewer," wherever located, whose product is sold or offered for sale within the state, five hundred dollars (\$500.00);

Each "wholesaler" four hundred dollars (\$400.00);

Each "retailer" two hundred dollars (\$200.00);

Any unit of a nationally chartered veterans organization fifty dollars (\$50.00);

Each "vehicle" being a common carrier of passengers, or other persons operating buffet and dining cars for such common carrier, twenty-five dollars (\$25.00).

All licenses issued in any year shall expire on the 30th day of June at midnight of such year. A transfer of any such license may be made on application to the Montana liquor control board with the consent of the said board provided that said transferee shall qualify under this act. The cities and incorporated towns may enact ordinances defining certain areas in said cities or towns where beer may or may not be sold providing that said ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana liquor control board based upon the population of the city or town and said city or town shall file a certified copy of said ordinance with the Montana liquor control board; the cities and towns may also impose a fee on a licensee of the board for selling beer at retail in the city or town providing said fee shall be reasonable and not in excess of the amount imposed by the state. This act shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of the Montana beer act which require beer manufactured outside of the state of Montana and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or sub-warehouse in Montana.

History: En. Sec. 45, Ch. 106, L. 1933; amd. Sec. 15, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 246, L. 1947; amd. Sec. 1, Ch. 122, L. 1963.

Amendment

The 1963 amendment substituted the words "wherever located, whose product is sold or offered for sale within the state, five hundred dollars (\$500.00)" for the words "seven hundred fifty dollars (\$750.00)" in the first paragraph; and added the fourth sentence to the second paragraph.

Separability Clause

Section 2 of Ch. 122, Laws 1963 read "If any word, phrase, clause, figure, sentence, subdivision, or section of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

Repealing Clause

Section 3 of Ch. 122, Laws 1963 repealed all acts and parts of acts in conflict therewith.

4-342. (2815.45) Denial of application for license or renewal, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

4-349. (2815.51) Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified—brewers not to be interested in retailer financially. (a) It shall be unlawful for any brewer or wholesaler to lease, furnish, give or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer or furnish, give or pay for any repairs, improvements, painting or deco-

rating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give or loan to a retail licensee:

1. Bottle openers, can openers and trays, with or without advertising matter thereon;

2. Advertising matter or novelties, of a value of not to exceed fifteen dollars (\$15.00) in any calendar year, to any one (1) retailer for display use on the interior of said retailer's place of business; and

3. Not more than two (2) illuminated or electrical signs, each of not more than three hundred (300) square inches in area, and both not in excess of fifty dollars (\$50.00) in value, exclusive of installation charges, which signs may bear the name, brand name, trade name, trade-mark or other designation indicating the name of the manufacturer, and the place of manufacture, of beer, for display by the retail licensee on and within the interior of his place of business, or in the windows inside the place of business of the licensed retailer, and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises, at the time of such display.

(b) No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgage against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.

(c) No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefore within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the board in its discretion.

History: En. Sec. 18, Ch. 46, Ex. L. 1933; amd. Sec. 10, Ch. 166, L. 1951; amd. Sec. 1, Ch. 51, L. 1955; amd. Sec. 1, Ch. 110, L. 1959.

Repealing Clause

Section 2 of Ch. 110, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment added the last sentence to subd. (b).

**CHAPTER 4—MONTANA RETAIL LIQUOR LICENSE ACT—SALES BY
LICENSEES OF BOARD**

Section 4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation.

4-407.1 Notice of application—publication—protest.

4-409.1. Special permits to sell liquor—application and issuance—fee.

4-414. Hours for sale of liquor.

4-401. Declaration of policy as to retail sale of liquor.**References**

Cited in *Gill v. Rafn*, 133 M 505, 326 P 2d 974; *State ex rel. Geschwender v. La Rowe*, 136 M 591, 341 P 2d 906.

4-402. Definitions.**References**

Cited in *State ex rel. Geschwender v. La Rowe*, 136 M 591, 341 P 2d 906.

4-403. Issuance of retail liquor licenses—limit on number of licenses—retail wine licenses—lapse and cancellation. (1) Except as otherwise provided by law, a license to sell liquor at retail in accordance with the provisions of this act and the regulations of the Montana liquor control board, may be issued to any person who shall be approved by a majority of the board as a fit and proper person to sell liquor; provided, that the number of retail liquor licenses which the board may issue shall be determined as follows:

(a) The number of retail liquor licenses that the board may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to-wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail liquor licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, three (3) retail liquor licenses for the first one thousand (1000) inhabitants and one (1) retail liquor license for each additional one thousand (1000) inhabitants; in incorporated cities of over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail liquor licenses for the first three thousand (3000) inhabitants and one (1) retail liquor license for each additional one thousand five hundred (1500) inhabitants. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail liquor licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles

from each other, the total number of retail liquor licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined populations of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail liquor licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided that such limitations shall not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail liquor license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the board may issue; provided that no retail license may be issued by the board for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the board. The board shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail liquor licenses that the board may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, shall be not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the population of incorporated cities and incorporated towns in such county.

(2) From and after February 1, 1949, any retail license issued pursuant to this act not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

History: En. Sec. 3, Ch. 84, L. 1937; L. 1951; amd. Sec. 1, Ch. 56, L. 1955; amd. amd. Sec. 1, Ch. 226, L. 1947; amd. Sec. Sec. 1, Ch. 206, L. 1959; amd. Sec. 1, Ch. 1, Ch. 164, L. 1949; amd. Sec. 1, Ch. 144, 217, L. 1963.

Amendments

The 1959 amendment added the proviso at the end of subd. (2).

The 1963 amendment reduced the number of retail liquor licenses authorized in places of over 1,000 population, as specified in the first sentence of paragraph (1) (a) (for previous text, see parent volume); inserted "(as to ownership only)" in the proviso to the fourth sentence in paragraph (1) (a); deleted the words "or for use at premises situated within any unincorporated town" which followed "corporate limits thereof" in paragraph (1) (b); substituted "not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the population of incorporated cities and incorporated towns in such county" at the end of paragraph (1) (b) for "as de-

termined by the board in its sound discretion"; and deleted from the end of paragraph (1) (b) a proviso reading, "provided that no retail liquor license shall be issued for any premises so situated unless the board shall find that the issuance of such license is required by public convenience and necessity."

Repealing Clause

Section 2 of Ch. 206, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 206, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

4-407. Application for license—penalty for false statements.

References

Cited in State ex rel. Burns v. City of Livingston, — M —, 395 P 2d 971, 979.

4-407.1. Notice of application—publication—protest. When an application has been filed with the Montana liquor control board for a license to sell liquor at retail, or to transfer such license, the board shall promptly publish in a newspaper of general circulation in the city, town or county from whence such application shall come, a notice that such applicant has made application for such license, and that protests against the issuance of a license to the applicant will be heard at a time stated in the notice, which shall be at a special or regular meeting of the Montana liquor control board in the city of Helena, Montana. Notice of application for a new license shall be published once a week for four (4) consecutive weeks. Notice of application for transfer of a license shall be published once a week for two (2) consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL LIQUOR LICENSE

Notice is hereby given that on the _____ day of _____, 19____, one (name of applicant) filed an application for a retail liquor license with the Montana liquor control board, to be used at (describe location of premises where license is to be sold), and protests, if any there be, against the issuance of such license will be heard at the hour of —M, on the _____ day of _____, 19____, at the office of the Montana liquor control board in Helena, Montana.

Dated _____

Signed _____

ADMINISTRATOR

No license shall be issued until on or after the date set in the notice for hearing protests. Nor shall a license under this act be issued if the said Montana liquor control board shall find from the evidence at said

hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected, or that the purposes of the Montana retail liquor license act will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay to the Montana liquor control board, an amount sufficient to cover the costs of publishing said notice.

History: En. Sec. 1, Ch. 202, L. 1951; amd. Sec. 1, Ch. 145, L. 1965.

Amendment

The 1965 amendment deleted "as provided in chapter four (4) of volume one (1), of the Revised Codes of Montana of 1947" after "or to transfer such license"

in the first sentence of the preliminary paragraph; substituted "the board shall promptly publish" in the first sentence of the preliminary paragraph for "it shall be the duty of said board to promptly publish once a week for four (4) consecutive weeks"; and inserted the second and third sentences in the preliminary paragraph.

4-409.1. Special permits to sell liquor—application and issuance—fee.

Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the board, without notice or hearing as provided in section 4-407.1, be entitled to a special permit to sell liquor at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization, shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ten dollars (\$10.00).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the board shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year. Such post or lodge must have either a retail license or special permit to sell beer before being entitled to a special permit to sell liquor.

History: En. Sec. 2, Ch. 235, L. 1963.

4-412. Persons disqualified for license.

References

Cited in State ex rel. Burns v. City of Livingston, — M —, 395 P 2d 971, 979.

4-413. Persons to whom liquor may not be sold or given.

Jurisdiction of Prosecutions

With respect to the prosecution of a licensee for the sale of liquor to an interdicted person, the provisions of this chapter control over the provisions of the

liquor control act (sections 4-201 to 4-241) and a justice court had jurisdiction over such a prosecution. State ex rel. Geschwender v. La Rowe, 136 M 591, 341 P 2d 906.

4-414. Hours for sale of liquor. No liquor shall be sold, offered for sale or given away upon any premises licensed to sell liquor at retail during the following hours:

- (a) Sunday, from two A. M. to one P. M.;
- (b) On any other day between two A. M. and eight A. M.;

(c) On any day of a biennial general or primary election at which state and national officers are elected, during the hours when the polls are open, but not upon the day of any other election; provided, however, when any city, or incorporated or unincorporated town has any ordinance further restricting the hours of sale of liquor, such restricted hours shall be the hours during which sale of liquor at retail shall not be permitted within the jurisdiction of any such city or town.

History: En. Sec. 12, Ch. 84, L. 1937; amd. Sec. 2, Ch. 162, L. 1959.

Amendment

The 1959 amendment inserted the word "biennial"; inserted the phrase "at which state and national officers are elected" and substituted the phrase "but not upon the day of any other election; provided however" for the words "excepting bond elections."

Repealing Clause

Section 3 of Ch. 162, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 162, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 7, 1959.

4-417. Excise liquor tax—collection.

History: En. Sec. 15, Ch. 84, L. 1937; amd. Sec. 1, Ch. 41, L. 1939; amd. Sec. 1, Ch. 180, L. 1957. Approved at Referendum, Nov. 4, 1958.

Compiler's Note

This section was submitted to the qualified electors of the state of Montana and

approved by them on November 4, 1958, effective under Governor's proclamation of November 28, 1958 from and after the date of proclamation. The section as approved is set out in the parent volume.

4-420. Penalty for sale of alcoholic liquor without license.

Title Defect Cured

Since chapter 84 of the 1937 Session Laws was incorporated without reference to the original title in the Revised Codes of Montana 1947, as this section, and the Revised Codes of Montana 1947 were approved, legalized and adopted by the leg-

islature by the provisions of chapter 4 of the Laws of 1951 which now appear as section 12-330, any defect or omission in the title of the 1937 law was thereby cured. *State v. Garcia*, 132 M 600, 319 P 2d 962, 963.

4-425. Denial of application for license or renewal—suspension, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

License Issued under Mandate

Where, after stay of execution was denied, the liquor control board did not apply for supersedeas from the supreme

court but issued a license in compliance with a district court mandate, the question whether the mandate was proper did not present a justiciable controversy for the supreme court, even under section 93-8024. *Gill v. Rafn*, 133 M 505, 326 P 2d 974, distinguished in 136 M 453, 456, 348 P 2d 797, 799, 78 ALR 2d 1012.

4-439. Penalty for violating act—revocation of license.

References

Cited in *State ex rel. Geschwender v. La Rowe*, 136 M 591, 341 P 2d 906.

CHAPTER 5—IDENTIFICATION CARDS

Section 4-501. Definitions.

4-502. Identification card—form.

4-501. Definitions. As used in this act the term

(a) to (d). * * * [Same as parent volume.]

(e). [Deleted.]

History: En. Sec. 1, Ch. 107, L. 1955; **Amendment**
amd. Sec. 15, Ch. 154, L. 1965.

The 1965 amendment deleted a paragraph (e), for text of which see parent volume.

4-502. Identification card—form. Any person who desires to procure any beer and/or liquor from any vendor or licensee may, for the purpose of aiding such vendor or licensee to determine whether or not such person is at least twenty-one (21) years of age, be required to complete and sign an identification card, which shall be in substantially the following form:

ALCOHOLIC BEVERAGES IDENTIFICATION CARD

This card if properly completed and signed may be accepted by the vendor or licensee named below for the purpose of establishing the legal age of the person designated who desires to purchase alcoholic beverages.

Complete Two or More of the Following:

Social Security Card No. _____; Issued at _____ Date _____

Birth Certificate issued at _____; Date of birth _____.

Draft Card issued at _____; Date of birth _____.

Discharge Papers: Service _____; Issued at _____;
Date of birth _____.

Military Identification Card or Pass: Service _____;

Issued at _____ Date _____ Age Shown _____

Driver's License: Date _____; Issued at _____;
Age Shown _____.

I hereby represent to _____ that I am over the age of twenty-one (21) years, having been born on the _____ day of _____, 19____, at _____, and this statement is made for the purpose of establishing my age in order to obtain service of alcoholic beverages with the full knowledge that I am subject to fine and/or imprisonment for any misrepresentation made herein. I have submitted the documents and papers checked on this card, and the person to whom submitted has compared the signatures thereon and has also compared the descriptions on said documents with my physical characteristics.

(Witness) _____ (Signature) _____

(Address) _____ (Address) _____

The Montana liquor control board shall cause to be printed and distributed upon request to vendors and licensees blank forms of the identification card herein prescribed.

History: En. Sec. 2, Ch. 107, L. 1955;
amd. Sec. 16, Ch. 154, L. 1965.

Amendment

The 1965 amendment deleted from the form lines following the preliminary paragraph therein and reading, "— Fill in the Following — Montana Liquor Permit No. —; Issued at —."

Repealing Clause

Section 17 of Ch. 154, Laws 1965 read "Sections 4-157, 4-162, 4-165, 4-166, 4-168, 4-511, and sections 4-123 through 4-132, R. C. M. 1947, are repealed."

4-511. Repealed.

Repeal

This section (Sec. 6, Ch. 190, L. 1957), prohibiting the issuance of liquor permits

to persons under 21 years of age, was repealed by Sec. 17, Ch. 154, Laws 1965.

TITLE 5—BANKS AND BANKING

- Chapter 2. Organization and incorporation of banks, 5-201, 5-206, 5-217.
5. Miscellaneous regulatory provisions, 5-506.
 6. State banking department—state examiner ex-officio superintendent of banks, 5-602, 5-603.
 8. Impairment of capital—insolvency, 5-803.
 9. Examination and supervision—state examiner's fund, 5-904 to 5-910.
 10. General powers and limitations of banks, 5-1001, 5-1028.
 11. Closing and liquidation of banks, 5-1114, 5-1117.

CHAPTER 1—THE BANK ACT—DEFINITION OF TERMS

5-102. (6014.2) Institutions to which act is applicable.

Effect of Incorporation

A corporation which pursuant to sections 5-202 and 5-203 applied to the Montana superintendent of banks for an authorization under date of November 29, 1955, became a bank no later than April 30, 1956, the date on which the application was granted by the superintendent al-

though it did not commence a banking business until November 1, 1960. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 940.

References

First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 423.

5-104. (6014.4) Commercial bank defined.

References

Cited in First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 940.

CHAPTER 2—ORGANIZATION AND INCORPORATION OF BANKS

- Section 5-201. Organization and incorporation—articles of agreement.
- 5-206. Amount of capital.
 - 5-217. Change in number of directors—procedure—approval by superintendent of banks.

5-201. (6014.10) Organization and incorporation—articles of agreement. Any three or more persons, desiring to associate themselves together for the purpose of becoming a corporation to engage in any one or more or all of the businesses mentioned in this act, shall sign and acknowledge, in the manner provided for the acknowledgment of deeds of real estate, articles of agreement, which shall set forth:

1 to 4. * * * [Same as parent volume.]

5. The number of the board of directors, and the names of those agreed upon for the first year and the articles may provide that the number of directors elected at each annual meeting, within the limits specified in this act, shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two (2), within the limits specified in this act, and appoint persons to fill the resulting vacancies between meetings of the stockholders.

6. * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 89, L. 1927;
amd. Sec. 1, Ch. 7, L. 1965.

Amendment

The 1965 amendment added to subd. 5 all of the language following "those agreed upon for the first year."

5-202. Presentation of articles to superintendent of banks, etc.

Creation of Bank

When the superintendent of banks issued a certificate of authority for the establishment of a bank, the capital having been previously paid in, the organization became a state bank within the meaning of the Bank Holding Company Act of 1956 (U. S. C., tit. 12, secs. 1841 to 1848), even though it did not actually commence business until some time later. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 197 F Supp 417, 423, affirmed in 306 F 2d 937.

Effect of Incorporation

A corporation which applied to the Montana superintendent of banks for an authorization under date of November 29, 1955, became a bank, as defined in section 5-102, no later than April 30, 1956, the date on which the application was granted by the superintendent although it did not commence a banking business until November 1, 1960. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 940.

5-203. Superintendent of banks to approve or refuse, etc.

Approval of Application

A corporation which applies to the Montana superintendent of banks for an authorization becomes a bank when the

application is granted by the superintendent. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 940.

5-206. (6014.12) Amount of capital. The amount of the common and preferred stock of a commercial bank shall not be less than twenty-five thousand dollars (\$25,000) and in addition thereto there shall be created a surplus of not less than ten per cent (10%) of the amount of the capital stock of said bank, which said surplus and capital stock shall be paid up in cash and deposited with some bank or banks at the time the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned.

That a commercial bank having its place of business in a city or town of more than two thousand (2,000) and less than four thousand (4,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than thirty thousand dollars (\$30,000), and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided; that a commercial bank having its place of business in a city or town of more than four thousand (4,000) inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than fifty thousand dollars (\$50,000) and a surplus of ten per cent (10%) of the capital stock as hereinbefore provided.

The amount of the capital stock of a savings bank, trust company, or investment company shall be fixed and limited by the articles of agreement, and shall be not less than one hundred thousand dollars (\$100,000) nor more than ten million dollars (\$10,000,000), of which amount at least one hundred thousand dollars (\$100,000) must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the superintendent of banks for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine.

The shares of the common capital stock of all banks shall have a par value of one hundred dollars (\$100) or such less amount as may be provided in the articles of incorporation; provided that this act shall not require any bank in existence and doing business to increase its capital stock.

History: En. Sec. 8, Ch. 89, L. 1927; amd. Sec. 1, Ch. 81, L. 1935; amd. Sec. 1, Ch. 45, L. 1963.

in the articles of incorporation" in the last sentence of the section.

Amendment

The 1963 amendment inserted the words "or such less amount as may be provided

References

Cited in *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 939.

5-207. (6014.13) Calling of first meeting.

Commencement of Business

A corporation did not cease to be a bank because it did not commence business within one year from the date of its incorporation as required by section 15-808 where the superintendent of banks did not cancel his certificate of authorization, as authorized by this section, but continued to recognize the corporation as a bank. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 941.

Failure to Commence Business

The provisions of section 15-808 for automatic cessation of corporate powers if a corporation does not commence business within one year from the date of its incorporation are in direct conflict with this section, so do not apply to banks. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 197 F Supp 417, 424, affirmed in 306 F 2d 937.

5-217. (6014.23) Change in number of directors—procedure—approval by superintendent of banks. Any state bank or trust company may increase or diminish the number of its directors or may provide that the number of directors elected at each annual meeting, within the limits specified in this act, shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two (2) within the limits specified in this act, and appoint persons to fill the resulting vacancies between meetings of the stockholders by amending its articles of incorporation at any regular annual meeting or at any special meeting called and noticed for that purpose, of the stockholders of the bank or trust company, provided that the number of directors shall not at any time be less than three or more than eleven.

Whenever any bank or trust company shall decide to call a special meeting of the stockholders for the purpose of amending its articles of incorporation relative to the number of directors, written or printed notice of such meeting must be deposited in the post office addressed to each stockholder of record entitled to vote at such meeting under the articles of incorporation or amendments thereto, and the laws and constitution of Montana, at his last known place of residence at least ten days previous to the date set for the holding of such meeting, and in addition, said notice must be published once a week for two consecutive weeks in a newspaper published in the county wherein the principal place of business of such corporation is situated. If no newspaper is published in the county it shall not be necessary to publish said notice; provided, however, that the matter of amending the articles of incorporation to change the number of directors may be submitted to and acted upon at any annual meeting of the stockholders without special notice thereof.

If at the time and place specified in the notice of such special meeting or at the annual meeting of the stockholders, stockholders representing two-thirds of all the shares of stock of the corporation shall appear in person or by proxy and vote in favor of such amendment, a certificate of the proceedings showing a compliance of the provisions of this act and the amendment relative to the number of directors shall be prepared, certified and sworn to and filed with the superintendent of banks, who shall within thirty days after the receipt thereof either approve or reject the amendment. The action of the superintendent of banks on said amendment shall be final. If he approves the same, he shall notify the bank, whereupon the certificate with the superintendent's approval attached thereto shall be filed in the office of the county clerk and recorder of the county wherein the bank is situated, and a certified copy thereof shall be filed in the office of the secretary of state. Upon the filing of such certified copy with the secretary of state, the amendment shall become effective.

History: En. Sec. 19, Ch. 89, L. 1927; amd. Sec. 1, Ch. 145, L. 1931; amd. Sec. 1, Ch. 131, L. 1937; amd. Sec. 2, Ch. 7, L. 1965.

Amendment

The 1965 amendment inserted in the first paragraph the words "or may provide that the number of directors elected at each annual meeting, within the limits specified in this act, shall constitute the board for the year, all vacancies to be filled by the board taking the action, and

also may provide that a majority of the full board of directors may increase the number of the directors of the bank, not exceeding two (2) within the limits specified in this act, and appoint persons to fill the resulting vacancies between meetings of the stockholders"; and substituted "the amendment relative to the number of directors" for "the number to which the board of directors has been increased or diminished" in the first sentence of the third paragraph.

CHAPTER 5—MISCELLANEOUS REGULATORY PROVISIONS

Section 5-506. Limitation on real estate loans.

5-506. (6014.31) Limitation on real estate loans. Any commercial bank organized under the laws of the state of Montana may make real estate loans, secured by first liens upon improved real estate, including improved farm land and improved business and residential properties and may purchase any obligation so secured when the entire amount of such obligation is sold to the bank. Provided that, the amount of any such loan hereafter made shall not exceed fifty per centum (50%) of the appraised value of the real estate offered as security, and no such loan shall be made for a longer period than five (5) years, except that:

(1) Any such loan may be made in an amount not to exceed sixty per centum (60%) of the appraised value of the real estate offered as security and for a term not longer than twenty (20) years if such loan is secured by an amortized mortgage, deed of trust or other such instrument, under the terms of which the installment payments are sufficient to amortize forty per centum (40%) or more of the principal of the loan within a period of not more than twenty (20) years; and

(2) No such commercial bank shall make such loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired

plus the amount of its unimpaired surplus or in excess of sixty per centum (60%) of the amount of its time and saving deposits, whichever is the greater.

Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed six (6) months, whether or not secured by a mortgage or a similar lien on real estate upon which the residential or farm building is being constructed, shall not be considered as loans secured by real estate within the meaning of this act, but shall be classed as ordinary commercial loans, provided that no commercial bank shall invest in or be liable on any such loans in an aggregate amount in excess of fifty per centum (50%) of its actually paid in and unimpaired capital.

Loans made to establish rural or commercial businesses which are in whole or in part discounted or loaned against as security by a federal reserve bank for any part of which a commitment shall have been made by a federal reserve bank or in which the Reconstruction Finance Corporation cooperated or purchases a participation in, shall not be subject to the restrictions or limitations of this act upon loans secured by real estate, provided any commercial bank in this state shall from time to time have the same authority to make loans upon real estate as may be given by acts of Congress of the United States or the federal reserve system to national banks or bank members of the federal reserve system.

(3) The foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made and shall not apply to real estate loans which are insured under the provisions of any act of the Congress of the United States; and said limitations and restrictions shall not apply to the making, extension or renewal of any loans which are made under subchapter II of the act of Congress, known as the servicemen's readjustment act of 1944, or any amendment thereof or supplement thereto, as to any part of such loans.

These provisions, however, shall not prevent any bank from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust thereon on such real estate, nor from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith, when, in the judgment of the directors of such bank, such subsequent liens are necessary further to secure the payment of any debts and save such bank from loss; provided, the term "commercial bank" as used in this section, shall mean a bank organized to do the business specified in sections 5-104 to 5-108 of this code, only.

History: En. Sec. 27, Ch. 89, L. 1927; amd. Sec. 1, Ch. 23, L. 1941; amd. Sec. 1, Ch. 90, L. 1945; amd. Sec. 1, Ch. 25, L. 1959.

Amendment

The 1959 amendment in subd. (1) increased the term from "ten (10) years" to

"twenty (20) years" both times it appeared.

Repealing Clause

Section 2 of Ch. 25, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 6—STATE BANKING DEPARTMENT—STATE EXAMINER EX-OFFICIO SUPERINTENDENT OF BANKS

Section 5-602. State superintendent of banks.

5-603. State superintendent of banks—employees.

5-602. (6014.60) State superintendent of banks. The term of office of the superintendent of banks shall be four (4) years from and after his appointment, and it shall be his duty to execute all laws in relation to banks, acting personally or through his examiners, regular or special.

History: En. Sec. 56, Ch. 89, L. 1927; amd. Sec. 45, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a second sentence reading, "He shall file a bond as

superintendent of banks in a penal sum of ten thousand dollars with a surety or sureties to be approved by the governor, conditioned upon the faithful performance of the duties of his office as superintendent of banks."

5-603. (6014.61) State superintendent of banks—employees. The superintendent of banks shall have the power and authority with the approval of the governor to appoint such clerk and examiners, both regular and special, one of whom may be designated chief examiner, as may be necessary for the proper transaction of the business of the department. The examiners shall qualify by taking the oath of office required of other state officers and be commissioned by the superintendent of banks as such examiners.

History: En. Sec. 57, Ch. 89, L. 1927; amd. Sec. 13, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted "and giving a bond in the sum of ten thousand

dollars (\$10,000.00), to be approved by the governor, conditioned upon the faithful discharge of the duties of state bank examiners" after "required of other state officers" in the second sentence; and made another minor change.

5-605. (6014.63) Repealed.

Repeal

This section (Sec. 59, Ch. 89, L. 1927), relating to the salaries of the superintend-

ent of banks and of the clerks and bank examiners appointed by him, was repealed by Sec. 1, Ch. 129, Laws 1963.

CHAPTER 8—IMPAIRMENT OF CAPITAL—INSOLVENCY

Section 5-803. Deposits in insolvent bank.

5-803. (6014.74) Deposits in insolvent bank. Except as otherwise provided by the Uniform Commercial Code: Whenever any bank shall be insolvent in the manner described and set forth in this act, such bank shall not accept or receive on deposit any money, bank bills, or notes, United States treasury notes or currency, or other notes, bills or drafts circulating as money or currency, or transact any other business in connection with its operations, except as trustee for the depositors and parties transacting business with them, and it or they shall keep all such deposits of money, bills or notes, or United States treasury notes or currency, or other notes, bills, or drafts circulating as money or currency, separate and apart from the general assets of the bank, from and after the date of the accrual of such insolvency, and when such impairment or insolvency has been made good, such deposits received in trust may be transferred to the general assets of the bank on and by written consent of the superintendent of

banks; provided, that in the event such insolvency be not made good then any and all such trust deposits shall be returned to the depositors making them; provided, further, that any officer, director, cashier, manager, member, partner or managing partner thereof, who shall knowingly accept or receive, be accessory to or permit or connive at the receiving or accepting of such trust deposits, except in the manner hereinbefore set forth in this section, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding ten thousand dollars (\$10,000.00), or imprisonment in the state prison not exceeding five (5) years, or by both fine and imprisonment as aforesaid. [Effective January 1, 1965.]

History: En. Sec. 70, Ch. 89, L. 1927; Commercial Code" at the beginning of the
amd. Sec. 11-102, Ch. 264, L. 1963. section; and made a minor change in
phraseology.

Amendment

The 1963 amendment inserted "Except
as otherwise provided by the Uniform

CHAPTER 9—EXAMINATION AND SUPERVISION—STATE EXAMINER'S FUND

- Section 5-904. Payments by counties.
5-905. Payments by cities and towns.
5-906. Payments by county free high schools.
5-907. Payments by irrigation districts.
5-908. Payments by banks, investment and trust companies.
5-909. Payments by building and loan associations.
5-910. Special examinations and fees.

5-904. (6014.78) Payments by counties. For the credit of the state general fund each county of the state, shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year as follows:

Counties having a taxable valuation of five million dollars (\$5,000,000) or less, shall pay one hundred dollars (\$100.00) for each one million dollars (\$1,000,000) of taxable valuation, or fraction thereof;

Counties having a taxable valuation of more than five million dollars (\$5,000,000), but less than twenty million dollars (\$20,000,000), shall pay five hundred dollars (\$500.00), plus seventy-five dollars (\$75.00), for each one million dollars (\$1,000,000) of taxable valuation in excess of five million dollars (\$5,000,000) or fraction thereof;

Counties having a taxable valuation of more than twenty million dollars (\$20,000,000), but less than forty million dollars (\$40,000,000), shall pay sixteen hundred twenty-five dollars (\$1625.00) plus fifty dollars (\$50.00) for each one million dollars (\$1,000,000) of taxable valuation in excess of twenty million dollars (\$20,000,000) or fraction thereof;

Counties having a taxable valuation in excess of forty million dollars (\$40,000,000) shall pay twenty-six hundred twenty-five dollars (\$2625.00) plus twenty-five dollars (\$25.00) for each one million dollars (\$1,000,000) of taxable valuation in excess of forty million dollars (\$40,000,000) or fraction thereof;

The minimum payment hereunder for any one county shall be three hundred fifty dollars (\$350.00).

The fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a county within the calendar year in which the fee is payable.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 49, L. 1953; amd. Sec. 1, Ch. 186, L. 1959.

a provision providing for a maximum fee. For section prior to amendment see parent volume.

Amendment

The 1959 amendment generally revised this section changing the fees and deleted

Repealing Clause

Section 2 of Ch. 186, Laws 1959 repealed all acts and parts of acts in conflict therewith.

5-905. (6014.79) Payments by cities and towns. For the credit of such fund each city and town of the state shall pay to the state treasurer on or before the first day of July of each year, according to its taxable valuation for the preceding year, as follows:

Cities and towns having a taxable valuation of fifty thousand dollars (\$50,000) or less, fifty dollars (\$50);

Cities and towns having a taxable valuation of from fifty thousand dollars (\$50,000) to one hundred thousand dollars (\$100,000), sixty-five dollars (\$65);

Cities and towns having a taxable valuation of from one hundred thousand dollars (\$100,000) to two hundred thousand dollars (\$200,000), eighty dollars (\$80);

Cities and towns having a taxable valuation of from two hundred thousand dollars (\$200,000) to four hundred thousand dollars (\$400,000), one hundred five dollars (\$105);

Cities and towns having a taxable valuation of from four hundred thousand dollars (\$400,000) to six hundred thousand dollars (\$600,000), one hundred thirty dollars (\$130);

Cities and towns having a taxable valuation of from six hundred thousand dollars (\$600,000) to eight hundred thousand dollars (\$800,000), one hundred sixty dollars (\$160);

Cities and towns having a taxable valuation of from eight hundred thousand dollars (\$800,000) to one million dollars (\$1,000,000), two hundred dollars (\$200);

Cities and towns having a taxable valuation of from one million dollars (\$1,000,000) to one million two hundred fifty thousand dollars (\$1,250,000), two hundred forty dollars (\$240);

Cities and towns having a taxable valuation of from one million two hundred fifty thousand dollars (\$1,250,000) to one million five hundred thousand dollars (\$1,500,000), three hundred twenty dollars (\$320);

Cities and towns having a taxable valuation of from one million five hundred thousand dollars (\$1,500,000) to two million dollars (\$2,000,000), four hundred dollars (\$400);

Cities and towns having a taxable valuation of from two million dollars (\$2,000,000) to three million dollars (\$3,000,000), four hundred eighty dollars (\$480);

Cities and towns having a taxable valuation of from three million dollars (\$3,000,000) to four million dollars (\$4,000,000), five hundred sixty dollars (\$560);

Cities and towns having a taxable valuation of from four million dollars (\$4,000,000) to five million dollars (\$5,000,000), six hundred forty dollars (\$640);

Cities and towns having a taxable valuation of more than five million dollars (\$5,000,000), shall pay six hundred forty dollars (\$640) plus fifty dollars (\$50) for each million dollars of taxable valuation or fraction thereof in excess of five million dollars (\$5,000,000);

The said fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a city or town within the calendar year in which the fee is payable.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 48, L. 1953; amd. Sec. 1, Ch. 138, L. 1959.

creased the fee in each classification for examination and deleted a sentence which set a maximum fee for any city at \$1,000.

Repealing Clause

Section 2 of Ch. 138, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment in the first sentence substituted the words "such fund" for the words "state general fund"; in-

5-906. (6014.80) Payments by county free high schools. For the credit of the state general fund, each county free high school shall pay to the state treasurer on or before the first day of July of each year a fee according to the following rates:

County free high schools having a maximum attendance record as shown in the records of the office of the state superintendent of public instruction, according to the following schedule:

All county free high schools having an attendance of two hundred (200) or less, sixty dollars (\$60);

All county free high schools having an attendance of in excess of two hundred (200) and not exceeding three hundred (300), seventy-five dollars (\$75);

All county free high schools having an attendance in excess of three hundred (300) and not exceeding four hundred (400), one hundred dollars (\$100);

All county free high schools having an attendance in excess of four hundred (400) and not exceeding six hundred (600), one hundred twenty-five dollars (\$125);

All county free high schools having an attendance in excess of six hundred (600) and not exceeding one thousand (1000), one hundred fifty dollars (\$150);

All county free high schools having an attendance in excess of one thousand (1000) and not exceeding fifteen hundred (1500), two hundred dollars (\$200);

All county free high schools having an attendance in excess of fifteen hundred (1500), three hundred dollars (\$300).

The fees as prescribed shall be paid to the state treasurer regardless of whether or not the state examiner has made an examination of a county free high school within the calendar year in which the fee is payable.

That the fees for examining auxiliary funds of a county free high school, when requested by the trustees of the said high school, or deemed

necessary by the state examiner, shall be based on the fees as set forth in section 5-910.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 50, L. 1953; amd. Sec. 1, Ch. 139, L. 1959.

Repealing Clause

Section 2 of Ch. 139, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment raised the amount of the fee in each instance. For fees prior to amendment see parent volume.

5-907. (6014.81) Payments by irrigation districts. For the credit of said fund, each irrigation district under the supervision of the state examiner, shall pay to the state treasurer, within sixty (60) days from the date of examination, the following amounts as charges for such examinations, to be computed by the state examiner: For each day spent in the examination of books and records of any irrigation district by the state examiner or his representative, a charge of sixty dollars (\$60.00) shall be made; and, for any fraction of a day spent in the examination of any irrigation district's books and records, a charge of seven and one-half dollars (\$7.50) per hour shall be made. It shall be the duty of the state examiner, or his representative, to notify the secretaries of such districts of the time of presenting the books and records at the courthouse for examination.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 195, L. 1945; amd. Sec. 1, Ch. 159, L. 1959.

Repealing Clause

Section 2 of Ch. 159, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment completely revised this section. For section prior to amendment see parent volume.

5-908. (6014.82) Payments by banks, investment and trust companies. For the credit of said fund, each bank, trust company or investment company, under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July of each year, a fee, based upon its total assets as shown by the statement to the superintendent of banks on the last call report of the preceding year, according to the following rates:

The minimum fee for the examination of any bank, trust company or investment company shall be the sum of three hundred dollars (\$300);

For the first five million dollars (\$5,000,000) of assets, a charge of fifteen cents (15¢) for each one thousand dollars (\$1,000) of assets shall be made;

For the second five million dollars (\$5,000,000) of assets, a charge of ten cents (10¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of ten million dollars (\$10,000,000) but not exceeding twenty million dollars (\$20,000,000), a charge of five cents (5¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of twenty million dollars (\$20,000,000) but not exceeding thirty million dollars (\$30,000,000), a charge of three cents (3¢) for each one thousand dollars (\$1,000) of assets shall be made;

For all assets in excess of thirty million dollars (\$30,000,000), a charge of two cents (2¢) for each one thousand dollars (\$1,000) of assets shall be made.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 59, L. 1953; amd. Sec. 1, Ch. 141, L. 1959.

Repealing Clause

Section 2 of Ch. 141, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment completely revised this section. For section prior to amendment see parent volume.

5-909. (6014.83) Payments by building and loan associations. For the credit of said fund, each building and loan association under the supervision of the superintendent of banks, shall pay to the state treasurer, on or before the first day of July each year, a fee based upon the total assets of such association as shown by its last annual statement and upon the following rates:

The minimum fee to be paid by any building and loan association shall be the sum of one hundred dollars (\$100);

For the first five million dollars (\$5,000,000) of assets, a charge of fifteen cents (15¢) for each one thousand dollars (\$1,000) of assets shall be made;

For the second five million dollars (\$5,000,000) of assets, a charge of ten cents (10¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of ten million dollars (\$10,000,000) but not exceeding twenty million dollars (\$20,000,000), a charge of five cents (5¢) for each one thousand dollars (\$1,000) of assets shall be made;

For assets in excess of twenty million dollars (\$20,000,000) but not exceeding thirty million dollars (\$30,000,000), a charge of three cents (3¢) for each one thousand dollars (\$1,000) of assets shall be made;

For all assets in excess of thirty million dollars (\$30,000,000) a charge of two cents (2¢) for each one thousand dollars (\$1,000) of assets shall be made.

History: En. Sec. 73, Ch. 89, L. 1927; amd. Sec. 1, Ch. 167, L. 1929; amd. Sec. 1, Ch. 114, L. 1959.

Repealing Clause

Section 2 of Ch. 114, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 amendment completely revised the fees. For section prior to amendment see parent volume.

5-910. (6014.84) Special examinations and fees. Special examinations may be made of any county, city, town, school district, irrigation district, high school, bank, building and loan association, credit union or any other office, board or commission, whether temporary or permanent, however created, and for whatever purpose, having the control, management, collection or disbursement of any public money of any character or description, when in the judgment of the state examiner it shall be deemed neces-

sary, and such special examinations shall be charged for at the rate of sixty dollars (\$60.00) a day for each person engaged in the examination. All special examination fees or charges so collected by the state examiner and ex officio superintendent of banks and paid to the state treasurer, except those collected from state agencies, shall be placed in the earmarked revenue fund to be drawn upon by the state examiner and ex officio superintendent of banks to defray the actual costs and expenses of such special examinations, but all moneys remaining at the end of each current year shall be transferred by the state treasurer to the general fund.

The state examiner may also charge sixty dollars (\$60.00) a day for examining state agencies that spend moneys from funds other than the general fund, trust and legacy fund or agency fund. The charge shall be in proportion to the amount of such moneys spent to the total annual expenditures of the agency. All fees collected from state agencies shall be deposited in the revolving fund to the credit of the state examiner. All moneys remaining at the end of each current year shall be transferred to the general fund.

In any case where the current examination shall not have been made prior to the first day of July of any year, the above fees enumerated in sections 5-904, 5-905, 5-906, 5-907, 5-908 and 5-909 must be paid as herein specified, provided, however, that all examinations shall cover the entire period from the date of the last examination.

History: En. Sec. 2, Ch. 167, L. 1929; amd. Sec. 1, Ch. 58, L. 1953; amd. Sec. 1, Ch. 137, L. 1955; amd. Sec. 1, Ch. 180, L. 1959; amd. Sec. 222, Ch. 147, L. 1963.

Amendments

The 1959 amendment increased the fee per day from \$30 to \$60 and deleted a provision for expenses which read "plus the necessary transportation expenses and per diem at the rate currently in effect for all state and county employees."

The 1963 amendment, in the last sentence of the first paragraph, inserted "ex-

cept those collected from state agencies" and substituted "the earmarked revenue fund" for "a special fund to be known as the special examination fund," and deleted "in such special fund" after "moneys remaining"; inserted the second paragraph; and, in the last paragraph, inserted "enumerated in sections 5-904, 5-905, 5-906, 5-907, 5-908 and 5-909."

Repealing Clause

Section 2 of Ch. 180, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 10—GENERAL POWERS AND LIMITATIONS OF BANKS

Section 5-1001. Acceptance and issuance of drafts and letters of credit.

5-1028. Branch bank prohibited—exceptions.

5-1001. Acceptance and issuance of drafts and letters of credit. Every bank organized and existing under the laws of Montana, shall have power and authority to accept for payment at a future date, drafts drawn upon it, by its customers, and to issue letters of credit, authorizing holders thereof to draw drafts upon it, or its correspondents at sight or on time, provided that the total amount of drafts so accepted or letters of credit so issued for any one person, firm or corporation, shall not at any one time exceed twenty per cent (20%) of the capital and surplus of the accepting or issuing bank. [Effective January 1, 1965.]

History: En. Sec. 74, Ch. 89, L. 1927; amd. Sec. 11-103, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "not exceeding one (1) year" after "at sight or on time."

5-1007, 5-1008. (6014.91, 6014.92) Repealed.

Repeal

These sections (Secs. 80, 81, Ch. 89, L. 1927), relating to the liability of banks paying forged checks, and to checks de-

layed in presentment, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

5-1016, 5-1017. (6014.100, 6014.101) Repealed.

Repeal

These sections (Secs. 89, 90, Ch. 89, L. 1927), relating to bank liability on items forwarded, and to due diligence in for-

warding of items for collection, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

5-1028. (6014.112) Branch bank prohibited — exceptions. No bank shall maintain any branch bank, receive deposits or pay checks, except over the counter of and in its own banking house. Provided, that nothing in this section shall prohibit ordinary clearing house transactions between banks.

With the prior approval of the superintendent of banks, any bank doing business in this state may establish and maintain not more than one (1) detached drive-in and walk-up facility consisting of one (1) or more teller's windows. The distance of the facility from the main banking house shall not exceed one thousand (1,000) feet measured in a straight line from the closest point of the main banking house to the farthest point of the detached facility. The facility shall not be closer than two hundred (200) feet to a facility operated by any other bank nor closer than three hundred (300) feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than one hundred and fifty (150) feet to a facility operated by any other bank nor closer than two hundred (200) feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank and such other transactions as are normally and usually conducted or handled at tellers' windows in the main banking house.

History: En. Sec. 101, Ch. 89, L. 1927; amd. Sec. 1, Ch. 39, L. 1963; amd. Sec. 1, Ch. 80, L. 1965.

tances by mutual agreement) in the second paragraph.

Amendments

The 1963 amendment made a minor grammatical change in the first sentence and added the second paragraph.

The 1965 amendment inserted the fourth sentence (relating to reduction of dis-

Repealing Clause

Section 2 of Ch. 80, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 3 of Ch. 80, Laws 1965 read

"It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 4 of Ch. 80, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

Holding Company Banking

This section does not prohibit holding company banking. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 197 F Supp 417, 427, affirmed in 306 F 2d 937.

5-1043. (6014.127) Repealed.

Repeal

This section (Sec. 116, Ch. 89, L. 1927), relating to the time limit on stop payment

5-1047 to 5-1049. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 19, L. 1951), relating to the time allowed banks for the refusal of demand items presented

5-1051. Photographic or micro-film reproduction of bank records, etc.

Checking Account Records

In action by administratrix to recover amount of automobile purchase loan made by decedent to defendant, bank records of

Intention to Operate as Branch

A state bank whose stock was substantially all owned by a national bank did not violate this section, although the interlocking directorates of the national bank and the state bank at one time intended that the state bank should operate as a branch of the national bank, where steps were taken to eliminate any such intention. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 197 F Supp 417, 427, affirmed in 306 F 2d 937.

Unitary Type of Operation

A bank did not violate this section where the unitary type of operation characteristic of branch banking was not present. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 943, distinguished in 323 F 2d 290, 303.

orders, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

for credit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

decedent's checking account were properly admitted as evidence. *Olson v. McLean*, 132 M 111, 313 P 2d 1039, 1042, 1044.

CHAPTER 11—CLOSING AND LIQUIDATION OF BANKS

Section 5-1114. Claims—order of payment—priorities.

5-1117. Disposition of unclaimed funds.

5-1107. (6014.137) Powers of superintendent on closing bank, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

5-1108. (6014.138) Recourse of aggrieved bank, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

5-1112. (6014.142) Claims—allowance and rejection.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

5-1114. (6014.144) Claims—order of payment—priorities. Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the superintendent of banks shall be as follows:

(1) to (8). * * * [Same as parent volume.]

History: En. Sec. 134, Ch. 89, L. 1927;
amd. Sec. 4, Ch. 145, L. 1931; amd. Sec.
11-104, Ch. 264, L. 1963.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

5-1117. (6014.147) Disposition of unclaimed funds. The superintendent shall certify to the treasurer of the state a complete list of funds remaining in his hands uncalled for, which have been left in his hands in his official capacity, in trust for depositors in and creditors of any liquidated bank after they have been held by him for six months from the date of the final liquidation of the institution. Along with this certificate, he shall transmit to the treasurer of the state the funds with accumulated interest thereon, which he has so held in trust for six months. A copy of such certificate shall also be filed with the state auditor, who shall make a record thereof.

The state treasurer shall deposit such funds and interest in the general fund of the state of Montana.

Any depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the state board of examiners for the amount due him. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the state board of examiners shall forward it to the auditor, who shall audit the same and if found correct so certify to the state board of examiners, who, if they approve it, shall transmit it to the legislative assembly with a statement of their approval.

History: En. Sec. 137, Ch. 89, L. 1927;
amd. Sec. 1, Ch. 143, L. 1961.

to be due such depositor or creditor which shall be paid by the treasurer."

Amendment

The 1961 amendment inserted the second paragraph; substituted "state board of examiners" for "superintendent" in the first sentence of the last paragraph; and substituted the third sentence of the last paragraph for a sentence reading, "When satisfied as to the correctness of the claim and of the identity of the person, the superintendent shall approve the claim and forward it to the auditor, who shall audit the same and if found correct issue his warrant payable to the depositor or creditor for the amount shown by the records

Funds Previously Transmitted

Section 2 of Ch. 143, Laws of 1961, provided for disposition of previously transmitted funds as follows: "Section 2. Disposition of unclaimed funds previously transmitted to the state treasurer. All funds and accumulated interest thereon heretofore transmitted to the state treasurer under the provisions of section 5-1117 of Replacement Volume 1, Part 2, of the Revised Codes of Montana, 1947, shall be deposited by the state treasurer in the general fund of the state of Montana."

5-1118. (6014.148) Disposition of assets remaining after payment, etc.

Cross-Reference

Application of Montana Rules of Civil

Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

CHAPTER 14—UNIFORM COMMON TRUST ACT

5-1401. Common trust fund authorized.

NOTE.—Uniform State Law. In addition to the states listed in the compiler's note in the parent volume the following

also have adopted the Uniform Common Trust Fund Act: District of Columbia, Iowa, and Oklahoma.

TITLE 6—BONDS AND UNDERTAKINGS

- Chapter 1. Official bonds of state officers, 6-105 to 6-108.
3. General provisions relative to official bonds, 6-325, 6-326, 6-331.

CHAPTER 1—OFFICIAL BONDS OF STATE OFFICERS

- Section 6-105. Controller to purchase all bonds—exemptions—individual or group bonds—approval of form.
6-106. All officers and employees to be bonded—determination of amounts of bonds—competitive bids.
6-107. Companies authorized to execute bonds.
6-108. Proration of bond premiums—payment of prorated amounts.

6-101 to 6-104. (464, 465, 469, 470) **Repealed.**

Repeal

These sections (Secs. 1051, 1052, Pol. C. 1895; Secs. 1, 2, Ch. 229, L. 1921; Sec. 1,

Ch. 161, L. 1937), relating to official bonds of state officers, were repealed by Sec. 51, Ch. 177, Laws 1965.

6-105. Controller to purchase all bonds—exemptions—individual or group bonds—approval of form. The state controller shall purchase all surety bonds for state officers and employees. As used in this act, the term “state officers and employees” does not include notaries public, supreme court justices, district court judges or members and employees of the legislative assembly. A bond may cover an individual officer or employee or group of officers and employees. The form of all bonds shall be prescribed by the controller, subject to the approval of the attorney general.

History: En. Sec. 1, Ch. 177, L. 1965.

Title of Act

An act relating to surety bonds for state officers and employees: providing that the state controller shall purchase all surety bonds for state officers and employees; establishing requirements and procedures for the purchase of such bonds; amending sections 5-602, 6-325, 6-326, 6-331, 3-103, 3-205, 4-106, 4-110, 5-603, 26-102, 26-111, 26-115, 27-404, 32-

1601, 32-1602, 40-1727, 41-1603, 44-404, 53-101, 66-407, 66-514, 66-904, 66-1505, 66-2203, 66-2333, 71-202, 71-203, 72-102, 75-303, 75-1301, 75-2703, 77-120, 80-1205, 81-201, 81-208, 81-1403, 81-2010, 81-2013, 82-107, 82-601, 82-1230, 82-3105, 89-103, 89-118, 90-122, R. C. M. 1947; and repealing sections 3-407, 6-101, 6-102, 6-103, 6-104, 46-702, 66-810, 77-1004, 79-809, 82-404, 82-507, 82-1013, 82-1907, 82-2213, 92-106 and 92-107, R. C. M. 1947.

6-106. All officers and employees to be bonded—determination of amounts of bonds—competitive bids. All state officers and employees shall be bonded. Before determining the amount for which a state officer or employee shall be bonded, the controller shall consult with the head of the institution or agency involved and the head of the agency responsible for the examination or postauditing of state agencies. The amount for which a state officer or employee shall be bonded shall be based on the amount of money or property handled and the opportunity for defalcation. If a state officer or the head of an agency, board or department feels that the amount of the bond set by the controller is ex-

cessive or inadequate, he may appeal to the board of examiners, whose decision shall be final. All bonds shall be purchased by competitive bid.

History: En. Sec. 2, Ch. 177, L. 1965.

6-107. Companies authorized to execute bonds. Bonds purchased by the state controller shall be executed by responsible insurance or surety companies admitted and authorized to execute surety bonds in this state.

History: En. Sec. 3, Ch. 177, L. 1965.

6-108. Proration of bond premiums—payment of prorated amounts. The state controller shall prorate the premiums for bonds covering more than one state agency or institution among the state agencies and institutions whose officers and employees are covered. Such proration shall be based on the risk of bonding the officers and employees of each agency or institution. The controller shall order payment of the prorated amount from moneys which are available to such agencies or institutions for the payment of general administrative expenses.

History: En. Sec. 4, Ch. 177, L. 1965. "This act shall not affect the validity of bonds in effect on the effective date of this act."

Saving Clause

Section 5 of Ch. 177, Laws 1965 read

CHAPTER 3—GENERAL PROVISIONS RELATIVE TO OFFICIAL BONDS

Section 6-325. Release of sureties.

6-326. Proceedings to obtain release from bond—statement—notice.

6-331. Applicable to what bonds.

6-325. (494) Release of sureties. Any surety on the official bond of any county, city, town, or township officer, or on the official bond of any executor, administrator, guardian, or on the bond or undertaking of any person where by law a bond or undertaking is required, may be released from all liability thereon accruing from and after proper proceedings had therefor, as provided in this act.

History: En. Sec. 1075, Pol. C. 1895; re-en. Sec. 403, Rev. C. 1907; re-en. Sec. 494, R. C. M. 1921; amd. Sec. 1, Ch. 134, L. 1941; amd. Sec. 6, Ch. 177, L. 1965. Cal. Pol. C. Sec. 972.

Amendment

The 1965 amendment deleted "state" before "county, city" near the beginning of the section.

6-326. Proceedings to obtain release from bond—statement—notice. Any surety desiring to be released from liability on the bond of any county or township officer shall file a statement in writing, duly subscribed by himself, or some one in his behalf, setting forth the name and office of the person for whom he is surety, the amount for which he is liable as such, and his desire to be released from further liability on account thereof. A notice containing the object of such statement shall be served personally on the principal, unless he shall have left the state, or his whereabouts cannot after due and diligent search and inquiry be ascertained, in which case the same may be served by publication once a week for four (4) successive publications in some newspaper of general circulation published in the county where the bond is filed on record. The statement, except when the county clerk or county commissioners

are principals, shall be filed with the county clerk, and when the county clerk or county commissioners are principals, the statement shall be filed with the district judge. Any surety desiring to be released from liability on the bond of any city or town officer shall file and serve a similar statement with the city or town clerk or mayor. Any surety desiring to be released from an executor's, administrator's or guardian's bond or undertaking shall file and serve a similar statement with the proper officer, person, or authority where the bond is filed on record. All statements provided for in this section must be served personally on the principal as in this section provided, if he can be found for service in the state of Montana; if not he may be served by publication in a newspaper at the county seat as hereinbefore provided, or if no newspaper be published thereat, then in an adjoining county, without any order from any court or other authority: provided further, in all cases for which publication is provided, a printed or written notice posted in at least ten (10) conspicuous places in the county for the time specified for publication of said notice shall be deemed legal notice thereof.

History: En. Sec. 2, Ch. 134, L. 1941; amd. Sec. 7, Ch. 177, L. 1965.

Amendment

The 1965 amendment substituted "county or township officer" near the beginning of the section for "state officer"; deleted

"with the governor or secretary of state" before "a statement in writing" in the first sentence; and deleted a third sentence reading, "Any surety desiring to be released from the official bond of any county or township officer shall file and serve a similar statement."

6-331. (503) Applicable to what bonds. The provisions of this chapter apply to the bonds of county, town, or township officers or on the official bond of any executor, administrator, guardian or on the bond or undertaking of any person where by law a bond or undertaking is required except state officers and employees.

History: Ap. p. Sec. 1084, Pol. C. 1895; amd. Sec. 7, p. 82, L. 1899; re-en. Sec. 412, Rev. C. 1907; re-en. Sec. 503, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1935; amd. Sec. 7, Ch. 134, L. 1941; amd. Sec. 8, Ch. 177, L. 1965. Cal. Pol. C. Sec. 981.

Amendment

The 1965 amendment deleted "state" before "county, town" near the beginning of the section; and added "except state officers and employees" at the end of the section.

CHAPTER 4—PUBLIC WORKS CONTRACTOR'S BOND

6-401. (5668.41) Contractors performing public work to furnish bond, etc.

Estoppel of Surety

This section did not prevent a surety on a bond given hereunder from becoming liable by estoppel to a third party who, in reliance on the surety's representations that he would be protected by the bond, paid off unpaid checks of the contractor and advanced money to the contractor for future payments, all in the nature of claims covered by the bond. *Bower v. Tebbis*, 132 M 146, 314 P 2d 731.

Federal Court Actions

Sections 6-401 through 6-404 govern the court remedies in favor of suppliers and

materialmen suing for and making recovery upon surety bonds furnished and supplied by general contractors engaged in public works and they are the state law to be applied in federal court. *United States v. Reliance Ins. Co. of Philadelphia, Pa.*, 227 F Supp 939, 941.

Provender, Materials or Supplies

Equipment rental comes within the phrase "provender, materials or supplies" as used in a bond given under this section. *Bower v. Tebbis*, 132 M 146, 314 P 2d 731.

6-404. (5688.44) Amount and terms of bond—notice of claimant, etc.

Attorney Fees

Under this section the prevailing use plaintiff is entitled to recover as compensation for attorneys such sum as the court shall adjudge reasonable for the institu-

tion and prosecution of proceedings against surety. *United States v. Reliance Ins. Co. of Philadelphia, Pa.*, 227 F Supp 939, 941.

TITLE 7—BUILDING AND LOAN ASSOCIATIONS

Chapter 1. Laws regulating the operation of building and loan associations, 7-113.1.

CHAPTER 1—LAWS REGULATING THE OPERATION OF BUILDING AND LOAN ASSOCIATIONS

Section 7-113.1. Loans and investments.

7-113.1. Loans and investments. Building and loan associations and savings and loan associations organized, and operating under the laws of the state of Montana, and insured by the federal savings and loan insurance corporation, may, in addition to any loan or investment now permitted, make any real estate loan upon terms and conditions set by the state superintendent of banks but not to exceed the authority to make real estate loans granted to savings and loan associations chartered by the United States, and domiciled in Montana, the provisions of any laws of this state to the contrary notwithstanding. The additional real estate loans hereby authorized may be made on the same terms and conditions and subject to the same limitations as shall from time to time be permitted by acts of Congress of the United States or of the federal home loan bank board to federally chartered savings and loan associations domiciled in this state.

History: En. Sec. 1, Ch. 263, L. 1963.

Title of Act

An act providing for the making of loans and investments by building and loan associations and savings and loan as-

sociations organized and operating under the laws of the state of Montana, and providing that such associations may make all real estate loans which may be made by federal savings and loan associations having domicile in the state of Montana.

7-122. (6355.21) Taxation of associations.

Application

This section is a statute for classification of property of building and loan associations for property tax purposes and has nothing to do with corporate license taxation. Home Bldg. & Loan Assn. of Helena v. Fulton, 141 M 113, 375 P 2d 312, 313.

Construction

There is no conflict between this section and sections 7-159 and 84-1501, since they deal with separate and distinct taxes. Home Bldg. & Loan Assn. of Helena v. Fulton, 141 M 113, 375 P 2d 312, 313.

7-159. Act controlling.

Construction

There is no conflict between this section and sections 7-122 and 84-1501, since they

deal with separate and distinct taxes. Home Bldg. & Loan Assn. of Helena v. Fulton, 141 M 113, 375 P 2d 312, 313.

TITLE 8—CARRIERS AND CARRIAGE

- Chapter 1. Motor carriers—license and regulation, 8-101, 8-103, 8-104.1 to 8-104.6, 8-108 to 8-110, 8-119, 8-121.
2. Pipe line carriers of oil and coal—regulation, 8-201, 8-202, 8-204 to 8-207, 8-210.
5. Bills of lading, Repealed—Section 10-102, Chapter 264, Laws of 1963.
7. Common carriers in general, 8-709.

CHAPTER 1—MOTOR CARRIERS—LICENSE AND REGULATION

- Section 8-101. Definition of terms.
8-103. Board of railroad commissioners to supervise and regulate motor carriers—appointment and duties of supervisor.
8-104.1. Board's duty to fix rates.
8-104.2. Rate schedules, filing with board.
8-104.3. Deviation from rate schedules unlawful.
8-104.4. Rate preference, discrimination forbidden.
8-104.5. Changes, revisions of rate schedules, how made.
8-104.6. Recovery of excess charges.
8-108. Certificate required of class A motor carriers—contents of application—fee.
8-109. Certificate required of class B motor carriers—contents of application—fee.
8-110. Certificate required of class C motor carriers—contents of application—fee.
8-119. Penalties for violations.
8-121. Acts which prima facie deem person to be motor carrier.

8-101. (3847.1) **Definition of terms.** Unless the language or context clearly indicates that different meanings are intended, the following words, terms and phrases shall, for the purposes of this act, be given the meanings hereinafter subjoined to them.

(a) to (g). * * * [Same as parent volume.]

(h) The term "motor carrier," when used in this act, means every person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the state of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking; provided that nothing in this act shall be construed as affecting motor vehicles used in carrying property consisting of ordinary livestock or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation, or, the operation of school busses which are used in conveying school children to and from district or other schools, or the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by any person, firm or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, insofar as the use of em-

employees, supplies and materials in construction and production is concerned, or the transportation of property by motor vehicle within any city, town, or village with a population, according to the latest United States census, of less than five hundred persons, or within the commercial areas thereof as determined by the board.

(i) The words "for hire" mean for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service. An accommodative transportation movement by a person not in the transportation business shall not be construed as a service for hire, even though the persons owning the property transported or persons transported share in the cost or pay for the movement. Nothing in this act shall be construed so as to prevent bona fide leases, brokerage agreements or buy-and-sell agreements.

(j), (k). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 184, L. 1931; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963.

Amendment

The 1963 amendment deleted the words "or the transportation of freight or passengers by motor vehicles when done occasionally and not as a regular business" from the proviso to paragraph (h); added the words "or received or obtained through leasing, brokering or buy-and-sell

arrangements whereby a remuneration is obtained or derived for transportation service" to the first sentence of paragraph (i); substituted "An accommodative transportation movement" for "An occasional accommodative transportation service" at the beginning of the second sentence of paragraph (i); inserted "persons owning the property transported or" in the second sentence of paragraph (i); substituted "movement" for "service" at the end of the second sentence of paragraph (i); and added the third sentence of paragraph (i).

8-103. (3847.3) Board of railroad commissioners to supervise and regulate motor carriers—appointment and duties of supervisor. (a) The board of railroad commissioners is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate every motor carrier in this state; to fix specific, just, reasonable, equal and non-discriminatory rates, fares, charges and classifications for class A and class B motor carriers; to regulate the properties, facilities, operations, accounts, service, practices, affairs and safety of operations of all motor carriers; to require the filing of annual and other reports, tariffs, schedules, or other data by such motor carriers and to supervise and regulate motor carriers in all matters affecting the relationship between such motor carriers and the traveling and shipping public. The board shall have power and authority by general order or otherwise to prescribe rules and regulations in conformity with this act applicable to any and all motor carriers.

(b) The board shall appoint a supervisor of motor carriers who shall have general responsibility to it for enforcement of the provisions of this act. The supervisor shall direct all enforcement activities in behalf of the board, including the investigation and prosecution of violations of this act or the rules, regulations or orders prescribed thereunder by the board. The supervisor shall be either an attorney admitted to practice law in the state of Montana, or a person qualified by at least five (5)

years of suitable experience and training in appropriate phases of the motor carrier industry; he shall serve at the pleasure of the board and at an annual salary to be set by the board. The supervisor, and whatever field inspectors may be employed by the board to assist him, shall be deemed peace officers for the purpose of making arrests in connection with violations of this act, and issuing summonses, accepting bail and serving warrants of arrest. The supervisor and field inspectors are empowered to make reasonable inspections of cargoes carried by commercial motor vehicles and require production of manifests, bills of lading, leases and other documents relating to the cargo, routing or ownership of such vehicles.

(c) All rules and regulations in relation to schedules, service, tariffs, rates, facilities, accounts and reports shall have due regard for the differences existing between class A, class B, and class C motor carriers as herein defined, and shall be just, fair and reasonable to the said classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by class A and class B motor carriers for the carrying of persons and/or property, the board shall take into consideration the kind and character of service to be performed, the public necessity therefor, and the effect of such tariff and rates upon other transportation agencies, if any, and as far as possible avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier.

History: En. Sec. 3, Ch. 184, L. 1931; amd. Sec. 1, Ch. 205, L. 1963.

Amendment

The 1963 amendment divided the former text into subsections (a) and (c) and inserted subsection (b).

Discretionary Appointment

Taxpayer-citizen was not entitled to an injunction in an action questioning the qualifications of a supervisor appointed by the board of railway commissioners in proper exercise of their discretion. *Steel v. Board of Railroad Commrs.*, — M —, 397 P 2d 101.

8-104. (3847.4) Repealed.

Repeal

This section (Sec. 4, Ch. 184, L. 1931; Sec. 1, Ch. 262, L. 1955), relating to rates

and schedules, was repealed by Sec. 7, Ch. 201, L. 1961.

8-104.1. Board's duty to fix rates. It shall be the duty of the board to fix, alter, regulate and determine just, fair, reasonable, non-discriminatory, and sufficient rates, fares, charges, classifications, and rules of service for the operation of class A and B motor carriers within this state. The board also may fix and determine reasonable maximum or minimum rates for the operations of any class C motor carrier when the same are required for the best interests of public transportation.

History: En. Sec. 1, Ch. 201, L. 1961.

Title of Act

An act to revise the requirements, procedures and methods of filing and adopting rates, charges, fares, classifications, and rules of service for motor carriers; repealing section 8-104, Revised Codes of

Montana, 1947, as amended by chapter 262, laws of Montana, 1955; repealing section 8-106, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith; providing for an effective date.

8-104.2. Rate schedules, filing with board. Every class A or B motor carrier holding a certificate must maintain on file with the board a full and complete schedule of its rates, fares, charges, classifications, rules of service, and any and all tariff provisions relating to such rates, fares, charges, classifications, or rules. Every schedule on file with and approved by the board on the effective date of this act shall remain in full force and effect until changed or modified by the board or by the carrier with the approval of the board.

No change, modification, alteration, increase, or decrease in any rate, fare, charge, classification, or rule of service shall be made by any motor carrier without first obtaining the approval of the board. The board shall prescribe rules and/or regulations providing for the form and style of all schedules and tariffs and for the procedures to be followed in filing or publishing any changes or modifications of the same.

History: En. Sec. 2, Ch. 201, L. 1961.

8-104.3. Deviation from rate schedules unlawful. It shall be unlawful for any class A or B motor carrier to charge, demand, receive, or collect any greater or less rate, charge or fare than that fixed by the board for the transportation service provided. When maximum or minimum rates have been established for any service provided by any class C motor carrier, it shall likewise be unlawful for such carrier to charge, demand, receive, or collect any greater compensation or rate than that established for the service by any applicable maximum rate, or any less compensation or rate than that established by any applicable minimum rate. It also shall be unlawful for any class A or B motor carrier, or any class C motor carrier subject to maximum or minimum rates, to refund or remit in any manner or by any device any portion of the rates, fares, and charges required to be collected under the schedule of the class A or B carrier on file with the board or under the maximum or minimum rates established by the board for the class C carrier.

History: En. Sec. 3, Ch. 201, L. 1961.

8-104.4. Rate preference, discrimination forbidden. All rates, fares, charges, classifications, or rules of service for the transportation of property and/or persons upon the public highways of this state must be fair, just, reasonable, and non-discriminatory, and no motor carrier operating under established rates shall make, give, or permit any undue preference or advantage to any particular person, company, partnership, corporation or locality, or any particular description of traffic, nor shall such motor carrier subject any particular person, company, partnership, corporation, or locality, or any particular description of traffic, to any prejudice or disadvantage in any respect.

The board may, upon its own initiative or upon the complaint of any interested party, investigate any rate, fare, charge, classification, or rule of service contained in the schedule of any motor carrier; if the board shall find, after such investigation, that any such rate, fare, charge, classification, or rule of service is unfair, unjust, unreasonable, or discriminatory, it shall disallow the same and fix a rate, fare, charge, classification, or rule of

service which shall be fair, just, reasonable, and non-discriminatory, and it shall order the affected motor carrier or carriers to conform to such modified schedule; provided however, that each motor carrier affected by any complaint or investigation shall first be given notice of the same and an opportunity to be heard before the board.

History: En. Sec. 4, Ch. 201, L. 1961.

8-104.5. Changes, revisions of rate schedules, how made. No motor carrier shall change or revise any rate, fare, charge, classification, or rule of service contained in its schedule without first obtaining approval therefor from the board. Such changes or revisions shall be made by filing with the board the tariff sheet or sheets containing such changes or revisions, plainly stating the change or changes, or revision or revisions, to be made; provided further, that the public shall be provided with such notice of the proposed changes or revisions as the board shall, by rule, require. The tariff sheet or sheets containing such changes or revisions shall be deemed approved and effective thirty (30) days after the same are filed unless the proposed revisions or changes are suspended or disallowed by the board prior to the expiration of the thirty (30) day period; provided however, that the board may, for good cause, allow any change or revision to become effective on less than thirty (30) days after the filing thereof.

Upon its own initiative, or upon the complaint of any interested party filed with the board within fifteen (15) days after the date upon which a change or revision of any rate, fare, charge or classification is filed with the board, the board may suspend the operation of such rate, fare, charge, or classification for a period not to exceed one hundred and twenty (120) days, provided however that the order directing such suspension must be issued by the board not less than two (2) business days prior to the proposed effective date; and provided further, that the motor carrier or carriers filing such rate, fare, charge, or classification shall be given prompt notice by the board of any complaint filed by any interested party to any proposed tariff change or revision and such carrier or carriers also shall be given an opportunity to reply to any such complaint. If the proposed change or revision is in a tariff issued by a tariff publishing bureau for a motor carrier or carriers, notice to such bureau of any complaint will constitute notice to the participating carriers in such tariff. When the suspension of any proposed change or revision in a tariff is ordered by the board, it shall also order a public hearing to consider the reasonableness of the proposed change or revision; due notice shall be given for such hearing to all known interested or affected persons and the same shall be allowed to appear and present evidence. After considering the evidence presented at such hearing, the board shall issue an order approving, denying, or modifying the proposed change or revision; provided however, that unless such hearing is held and such order is issued within one hundred and twenty (120) days from the date upon which the suspension was ordered, the proposed change or revision shall be deemed approved and effective as filed.

History: En. Sec. 5, Ch. 201, L. 1961.

8-104.6. Recovery of excess charges. Any sum or amount of money paid to any motor carrier in excess of the rates, fares, or charges established for such service by the board may be recovered from such carrier by the person or shipper who paid the same in any action brought in the district court of the county in which such payment was made, provided that any such action must be brought within two (2) years from the date of such payment. No contract or agreement, written or otherwise, between such person or shipper and any motor carrier, shall be admissible in evidence for the purpose of showing a waiver of the right given by this section. If upon the trial of such action, it shall satisfactorily appear to the court or jury that such overcharge was wilfully made, the person or shipper bringing the said action shall be awarded damages in treble the amount of such excess or overcharge, together with the costs and expenses of such action, including a reasonable attorney's fee, to be taxed and collected as other costs in the action.

History: En. Sec. 6, Ch. 201, L. 1961.

Repealing Clause

Section 7 of Ch. 201, Laws 1961 read "That section 8-104, Revised Codes of Montana, 1947, as amended by chapter 262 of the laws of Montana, 1955, and section 8-106, Revised Codes of Montana, 1947, and all other acts or parts of acts in con-

flict herewith be and the same hereby are repealed."

Effective Date

Section 8 of Ch. 201, Laws 1961, provided this act should be in effect from and after its passage and approval. Approved March 7, 1961.

8-106. (3847.6) Repealed.

Repeal

This section (Sec. 6, Ch. 184, L. 1931), relating to discrimination in rates, was repealed by Sec. 7, Ch. 201, L. 1961.

8-108. (3847.8) Certificate required of class A motor carriers—contents of application—fee. (a) and (b). * * * [Same as parent volume.]

(c) Such application shall be accompanied by a filing fee of fifteen dollars (\$15.00) to thirty-five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested.

History: En. Sec. 8, Ch. 184, L. 1931; amd. Sec. 22, Ch. 121, L. 1965.

five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested" at the end of subsection (c).

Amendment

The 1965 amendment added "to thirty-

8-109. (3847.9) Certificate required of class B motor carriers—contents of application—fee. (a) and (b). * * * [Same as parent volume.]

(c) Such application shall be accompanied by a filing fee of fifteen dollars (\$15.00) to thirty-five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested.

History: En. Sec. 9, Ch. 184, L. 1931; amd. Sec. 23, Ch. 121, L. 1965.

five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested" at the end of subsection (c).

Amendment

The 1965 amendment added "to thirty-

8-110. (3847.10) Certificate required of class C motor carriers—contents of application—fee. (a) and (b). * * * [Same as parent volume.]

(c) Such application shall be accompanied by a fee of fifteen dollars (\$15.00) to thirty-five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested.

History: En. Sec. 10, Ch. 184, L. 1931; amd. Sec. 24, Ch. 121, L. 1965.

Amendment

The 1965 amendment added "to thirty-

five dollars (\$35.00) to be set by the board based on the number of counties for which the certificate is requested" at the end of subsection (c).

8-119. (3847.19) Penalties for violations. Any motor carrier, subject to the provisions of this act, or, whenever any such motor carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or persons acting for or employed by such corporation, who violates or fails to comply with or who procures, aids, or abets in the violation of any provision of this act, or who fails to obey, observe, or comply with any lawful order, decision, rule or regulation, direction, demand, or requirement of the board, or any part of provisions thereof, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 19, Ch. 184, L. 1931; amd. Sec. 2, Ch. 204, L. 1963.

Amendment

The 1963 amendment increased the minimum fine from \$5 to \$25 and the maximum fine from \$100 to \$500.

8-121. (3847.21) Acts which prima facie deem person to be motor carrier. Any person, firm or corporation maintaining a public motor vehicle stand, or by sign, symbol, or device or vehicle or clothing, or by advertisement holds forth transportation for compensation, or solicits the transportation of persons or property for compensation among the public, or solicits for trips for compensation, or provides transportation service to the public under the guise of leasing or buy-and-sell arrangements, shall be deemed, prima facie, a "motor carrier" subject to this act, and the burden of proof shall be on such person, firm or corporation to disprove such status.

History: En. Sec. 21, Ch. 184, L. 1931; amd. Sec. 3, Ch. 204, L. 1963.

Separability Clause

Section 4 of Ch. 204, Laws 1963 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Amendment

The 1963 amendment deleted the words "at trains, hotels or other places" which followed the words "among the public"; and inserted the words "or provides transportation service to the public under the guise of leasing or buy-and-sell arrangements."

CHAPTER 2—PIPE LINE CARRIERS OF OIL AND COAL—REGULATION

Section 8-201. Common carriers defined.

8-202. Pipe lines public utilities—jurisdiction.

8-204. Establishment of rates—hearing—complaints.

8-205. Railroad commissioners may require connections—facilities—rules.

- 8-206. Tariffs and reports—board's authority to hear complaints—witnesses—enforcement of orders by board.
- 8-207. Discrimination prohibited—establishment of rates.
- 8-210. Duty to transport without discrimination.

8-201. (3848) Common carriers defined. Every person, firm, corporation, limited partnership, joint-stock association or association of any kind whatever:

(a) Owning, operating, or managing any pipe line or any part of any pipe line within the state of Montana, for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire, or engaged in the business of transporting crude petroleum, coal, or the products thereof by pipe lines; or

(b) Owning, operating, or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, coal, or the products thereof, to or for the public for hire, and which said pipe line is constructed or maintained upon, along, over, or under any public road or highway; or

(c) Owning, operating, or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum, coal, or the products thereof, and which said pipe line or pipe lines is or may be constructed, operated, or maintained across, upon, along, over, or under the right of way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, or the products thereof as a common carrier; or

(d) Owning, operating, or managing, or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or any part of any pipe line, for the transportation from any oil field, coal mine or field, or place of production within the state of Montana to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, coal, or the products thereof, bought of others; or

(e) Made a common carrier by or under the terms of contract with or in pursuance of the law of the United States, is hereby declared to be a common carrier and subject to the provisions hereof, but the provisions of this act shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as herein defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system.

History: En. Sec. 1, Ch. 8, Ex. L. 1921; re-en. Sec. 3848, R. C. M. 1921; amd. Sec. 1, Ch. 190, L. 1955; amd. Sec. 1, Ch. 170, L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" twice in subd. (a), once in subd. (b), twice in subd. (c), and once in subd. (d); and inserted "coal mine or field" after "oil field" in subd. (d).

8-202. (3849) Pipe lines public utilities—jurisdiction. It is declared that the operation of these pipe lines, to which this act applies, for the

transportation of crude petroleum, coal, or the products thereof, in connection with the purchase or purchase and sale of such crude petroleum, coal, or the products thereof, is a business in mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum, coal, or the products thereof, using in connection with such business a pipe line of the class subject to this act to transport the crude petroleum, coal, or the products thereof so bought or sold shall not be conducted, unless such pipe line so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the board of railroad commissioners of Montana. It shall be the duty of the attorney general to enforce this provision by injunction or other adequate remedy.

History: En. Sec. 2, Ch. 8, Ex. L. 1921; re-en. Sec. 3849, R. C. M. 1921; amd. Sec. 2, Ch. 190, L. 1955; amd. Sec. 2, Ch. 170, L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" in four places.

8-204. (3851) Establishment of rates — hearing — complaints. The board of railroad commissioners of Montana shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading, and delivering crude petroleum, coal, or the products thereof by such common carrier in this state, and for the use of storage facilities necessarily incident to such transportation and to prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring and loading facilities, and it shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject. No order establishing or prescribing rates, rules, and regulations shall be made except after hearing and at least ten (10) days' and not more than thirty (30) days' notice to the person, firm, corporation, partnership, joint-stock association, or association owning or controlling and operating the pipe line or pipe lines affected. In the event any rate shall be filed by any pipe line and complaint against same or petition to reduce same shall be filed by any shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint.

History: En. Sec. 4, Ch. 8, Ex. L. 1921; re-en. Sec. 3851, R. C. M. 1921; amd. Sec. 3, Ch. 190, L. 1955; amd. Sec. 3, Ch. 170, L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" in the first sentence.

8-205. (3852) Railroad commissioners may require connections—facilities—rules. Every common carrier as above defined shall exchange crude petroleum tonnage, coal tonnage, or petroleum or coal products tonnage with each like common carrier, and the board of railroad com-

missioners of Montana shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the board of railroad commissioners of Montana; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum, coal, or the products thereof of patrons at all points on such pipe line. No carrier shall be required to receive or transport any crude petroleum, coal, or the products thereof except such as may be marketable under rules and regulations to be prescribed by the board of railroad commissioners of Montana which they are hereby empowered and required to prescribe. The board of railroad commissioners of Montana is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in crude oil, coal, or the products thereof tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. It is provided, however, that the recital herein of particular powers on the part of said board of railroad commissioners of Montana shall not be construed to limit the general powers conferred by this act. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the board of railroad commissioners of Montana as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

History: En. Sec. 5, Ch. 8, Ex. L. 1921; re-en. Sec. 3852, R. C. M. 1921; amd. Sec. 4, Ch. 190, L. 1955; amd. Sec. 4, Ch. 170, L. 1963.

troleum or coal products tonnage" near the beginning of the section for "crude petroleum tonnage or petroleum products tonnage"; and inserted "coal" after "crude petroleum" or "crude oil" in three places.

Amendment

The 1963 amendment substituted "crude petroleum tonnage, coal tonnage, or pe-

8-206. (3853) Tariffs and reports—board's authority to hear complaints—witnesses—enforcement of orders by board. Such common carriers of crude petroleum, coal, or the products thereof shall make and publish their tariffs under such rules and regulations as may be prescribed by said board of railroad commissioners of Montana, the board of railroad commissioners of Montana shall require them to make reports and may investigate their books and records kept in connection with such business. The board of railroad commissioners of Montana shall require of such common carrier pipe lines monthly reports, duly verified under oath, of the total quantities of crude petroleum, coal, or the products thereof owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, provided no publicity shall be given by the board of railroad commissioners of Montana to the reports as to stock of crude petroleum, coal, or the products thereof on hand of any particular pipe line; but the board of railroad commissioners of Montana in its discretion may make public the aggregate amounts held by all the pipe lines making such reports, and of their aggregate storage capacity. The board of railroad commissioners of Montana shall have the power and authority to hear and determine complaints, to require

attendance of witnesses, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders.

History: En. Sec. 6, Ch. 8, Ex. L. 1921;
re-en. Sec. 3853, R. C. M. 1921; amd. Sec.
5, Ch. 190, L. 1955; amd. Sec. 5, Ch. 170,
L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" in three places.

8-207. (3854) Discrimination prohibited—establishment of rates. No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under same or similar circumstances in the transportation of crude petroleum, coal, or the products thereof; nor shall there be any discrimination in the transportation of crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum, coal, or the products thereof produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operation shall directly or indirectly charge, demand, collect, or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the board of railroad commissioners of Montana to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the board of railroad commissioners of Montana. When there shall be offered for transportation more crude petroleum, coal, or the products thereof than can be immediately transported, the same shall be equitably apportioned. The board of railroad commissioners of Montana may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments from any person, firm, corporation, or association of persons, exceeding three thousand (3,000) barrels of petroleum or the products thereof in any one day.

History: En. Sec. 7, Ch. 8, Ex. L. 1921;
re-en. Sec. 3854, R. C. M. 1921; amd. Sec.
6, Ch. 190, L. 1955; amd. Sec. 6, Ch. 170,
L. 1963.

Amendment

The 1963 amendment inserted "coal" after "crude petroleum" in four places.

8-210. (3857) Duty to transport without discrimination. Subject to the provisions of this act and the rules and regulations which may be prescribed by the board of railroad commissioners of Montana, every such common carrier shall receive and transport crude petroleum, or coal, delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination.

History: En. Sec. 10, Ch. 8, Ex. L. 1921;
re-en. Sec. 3857, R. C. M. 1921;
amd. Sec. 7, Ch. 170, L. 1963.

Amendment

The 1963 amendment inserted "or coal" after "crude petroleum."

CHAPTER 4—CARRIERS OF PERSONS, PROPERTY AND MESSAGES—
DUTIES AND OBLIGATIONS

8-405. (7815) General duties of carrier.

Application of Statute

Although this statute imposes upon the carrier the duty to exercise "the highest degree of care," it is but declaratory of the common law and does not constitute the carrier an insurer of the passenger's safety. *Wilson v. Northland Greyhound Lines, Inc.*, 166 F Supp 667, 669.

While a carrier is not an insurer of a passenger's safety, yet its duty toward a passenger is spelled out in this section. *Risken v. Northern Pac. Ry. Co.*, 137 M 57, 350 P 2d 831, 837.

CHAPTER 5—BILLS OF LADING

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

8-501 to 8-507. (7828 to 7834) Repealed.

Repeal

These sections (Secs. 2830 to 2836, Civ. C. 1895; Sec. 1, p. 154, L. 1901; Secs. 5314 to 5320, Rev. C. 1907; Secs. 7828 to 7834,

R. C. M. 1921), relating to bills of lading, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 7—COMMON CARRIERS IN GENERAL

Section 8-709. Effect of written contract.

8-709. (7854) Effect of written contract. A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can be manifested only by his signature to the same, except as otherwise provided in the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. Sec. 2878, Civ. C. 1895; re-en. Sec. 5340, Rev. C. 1907; re-en. Sec. 7854, R. C. M. 1921; amd. Sec. 11-105, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2176. Field Civ. C. Sec. 1142.

Amendment

The 1963 amendment added "except as otherwise provided in the Uniform Commercial Code" at the end of the section.

CHAPTER 8—COMMON CARRIERS OF PERSONS, PROPERTY AND
MESSAGES, THEIR RIGHTS AND OBLIGATIONS

8-816 to 8-818. (7871 to 7873) Repealed.

Repeal

These sections (Secs. 2914 to 2916, Civ. C. 1895), relating to the responsibility of

carriers for the delivery of freight, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 9—CEMETERIES

Chapter 6. Authority over disposition of remains in mausoleums or columbariums—records, 9-604.

CHAPTER 1—CEMETERY ASSOCIATIONS—INCORPORATION OF

9-121. (6489) Trustee or trustees of funds to be appointed, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

CHAPTER 6—AUTHORITY OVER DISPOSITION OF REMAINS IN MAUSOLEUMS OR COLUMBARIUMS—RECORDS

Section 9-604. Limitation of actions against mausoleum-columbarium—funeral directors and morticians exempt from liability.

9-604. Limitation of actions against mausoleum-columbarium—funeral directors and morticians exempt from liability. No action shall lie against any mausoleum-columbarium authority relating to the remains of any person which have been left in its possession for a period of two (2) years, unless a written contract has been entered into with the mausoleum-columbarium authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed mortician or funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana.

History: En. Sec. 26, Ch. 35, L. 1949; amd. Sec. 22, Ch. 41, L. 1963.

Amendment

The 1963 amendment inserted "mortician or" before "funeral director" in the last sentence.

Separability Clause

Section 23 of Ch. 41, Laws 1963 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are sev-

erable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 24 of Ch. 41, Laws 1963 read "Repeal. Sections 82-701, 82-702, 82-703, 82-704, 82-705, 82-706, 82-707, 82-708, 82-709, 82-710 and 82-711, R. C. M., 1947, are repealed."

CHAPTER 7—CORPORATIONS FOR OPERATION OF MAUSOLEUMS OR COLUMBARIUMS—POWERS

9-705. Powers to make rules and regulations.

Compiler's Note

The reference in this section to sections 9-606 to 9-614 should read sections 9-706 to 9-714.

CHAPTER 8—DEDICATION OF MAUSOLEUM OR COLUMBARIUM
PROPERTY—PLATS—PROPERTY RIGHTS IN PLOTS

9-816. Removal of dedication by order of court.

Cross-Reference

Application of Montana Rules of Civil
Procedure to proceeding for removal, see
M. R. Civ. P., Rule 81(a), Table A.

TITLE 10—CHILDREN AND CHILD WELFARE

- Chapter 1. Children's center, Repealed—Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965.
5. Dependent and neglected children—proceedings for protection, 10-504, 10-506, 10-507, 10-509, 10-512, 10-524.
 6. Juvenile courts and proceedings against juvenile delinquents, 10-602, 10-611, 10-612, 10-617, 10-622, 10-632, 10-633.
 8. Day care facilities for children, 10-801 to 10-811.
 9. Reports of child neglect or abuse, 10-901 to 10-905.

CHAPTER 1—CHILDREN'S CENTER

(Repealed—Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965)

10-101, 10-101.1, 10-102. (1484, 1485) Repealed.

Repeal

These sections (Secs. 1, 2, pgs. 189, 190, L. 1893; Sec. 1, Ch. 40, L. 1903; Sec. 1, Ch. 19, L. 1959; Sec. 69, Ch. 266, L. 1963), establishing, naming and providing for ad-

mittance of children to the Montana children's center, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2101 to 80-2107.

10-103, 10-104. (1486, 1487) Repealed.

Repeal

These sections (Sec. 1, Ch. 68, L. 1921), relating to general supervision of the

children's center and providing for a superintendent and a matron, were repealed by Sec. 82, Ch. 266, Laws 1963.

10-105. (1488) Repealed.

Repeal

This section (Sec. 2480, Pol. C. 1895; Sec. 70, Ch. 266, L. 1963), relating to the superintendent of the children's center,

was repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2101 to 80-2107.

10-106 to 10-109. (1489 to 1492) Repealed.

Repeal

These sections (Secs. 2481, 2482, 2486, Pol. C. 1895; Secs. 1260, 1261, 1265, Rev. C. 1907; Sec. 1, Ch. 162, L. 1919; Secs.

1489 to 1492, R. C. M. 1921), relating to the matron's duties and to training of inmates, were repealed by Sec. 82, Ch. 266, Laws 1963.

10-110 to 10-114. (1493 to 1497) Repealed.

Repeal

These sections (Secs. 2 to 6, Ch. 162, L. 1919; Secs. 1 to 5, Ch. 198, L. 1935; Sec. 1, Ch. 128, L. 1963; Secs. 71 to 74, Ch. 266, L. 1963), relating to higher education of inmates of the Montana chil-

dren's center, the industrial school, and the vocational school for girls, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2107 and 80-2213.

10-115 to 10-117. (1498 to 1500) Repealed.

Repeal

These sections (Secs. 22, 25, pp. 193, 194, L. 1893; Secs. 2488, 2491, 2494, Pol. C. 1895; Secs. 1267, 1270, 1273, Rev. C.

1907; Secs. 1498 to 1500, R. C. M. 1921), relating to funds and property of the children's center, were repealed by Sec. 82, Ch. 266, Laws 1963.

10-118 to 10-121. (1503 to 1506) Repealed.**Repeal**

These sections (Secs. 4 to 7, Ch. 40, L. 1903; Secs. 1, 2, Ch. 82, L. 1929; Sec. 7, Ch. 213, L. 1963; Secs. 75 to 77, Ch. 266, L. 1963), relating to admittance of chil-

dren to and the release of children from the Montana children's center, were repealed by Sec. 101, Ch. 199, Laws 1965. For present law, see secs. 80-2103 to 80-2106.

CHAPTER 5—DEPENDENT AND NEGLECTED CHILDREN— PROCEEDINGS FOR PROTECTION

Section 10-504. Citation and procedure.

10-506. Duty of county board to investigate and report, when.

10-507. Hearing of petition—evidence regarding financial ability of parents—court order—allocation of cost.

10-509. Commitment of child to children's center or other disposition.

10-512. Suspension of sentence.

10-524. Payment for board and room of dependent and neglected children—reimbursement by county.

10-501. (10465) Dependent and neglected children—definition.**Cross-Reference**

Application of Montana Rules of Civil Procedure to this chapter, see M. R. Civ. P., Rule 81(a), Table A.

References

Cited or applied in Application of Banschbach, 133 M 312, 323 P 2d 1112, 1113.

10-503. (10467) Application to courts with reference to dependent, etc.**Residence of Petitioner**

Since the court's jurisdiction had to be determined as of the time a proceeding was commenced, the issue of the petitioner's residence did not become moot even though the petitioner had established the necessary residence since the hearing in the proceeding. State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 123.

The word "resident" as used in this section must denote one actually domiciled within the county and in a proceeding to have a child declared dependent and neg-

lected, where the petitioner was not a resident of the county where the child resided, the court was without jurisdiction to proceed. State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 122, 123.

Where petitioner was not domiciled, and thus not a resident of the county where the child resided, the court was without power to attempt to confer jurisdiction by an amendment to conform to the alleged proof that petitioner was domiciled in such county. State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 123.

10-504. (10468) Citation and procedure. Upon the filing of such petition, if it shall appear that one or both of said parents, or guardian, if there be no parent, reside in said county, the judge of said court shall issue a citation fixing the day and time of hearing of such petition, which shall be served upon one or both of said parents or guardian, if any, if either can be found in said county, not less than two (2) days before the time fixed for said hearing, requiring them to appear on said day and hour and show cause, if any, why said child should not be declared, by said court, to be a dependent or neglected child, and sent to the Montana children's center, or otherwise cared for. In case it shall appear by said petition that neither of said parents is living, or does not reside in said county, or in case one or both of said parents, or guardian, in case there be no parents, shall endorse on said petition a request that the child be declared to be a dependent child, then the citation herein provided for need not be issued, and the court may thereupon proceed to

the examination and hearing provided for; provided, however, that in all cases, except where the proceeding is instituted or commenced by a representative of the division of child welfare service of the state department of public welfare, a citation must be issued and served upon a representative of the division of the child welfare service of the department of public welfare of the state of Montana, either personally or by mail. It shall be the duty of the officer receiving such citation to use diligence to find and serve the same on one or both of said parents, or upon the guardian, who shall represent such child in court; and in case there is neither of these found, then the court shall appoint an officer of the division of child welfare service, or some responsible taxpayer of said county, to represent said child in court, and the court may also appoint an attorney to represent said child. In case one or both of said parents of such child appear in court, it shall be the duty of the district judge to explain to the one so appearing the effect of an order of court, sending their child to the state home, or declaring it to be a dependent child. In case any dependent child is taken away from its parents or guardian under the provisions of this act, such parents or guardian shall thereafter have no right over or to the custody, service, or earnings of said child, except upon condition, in the interest of such child, as the court may impose or where, upon proper proceedings, such child may lawfully be restored to the parents or guardian.

History: En. Sec. 4, Ch. 92, L. 1907; re-en. Sec. 7832, Rev. C. 1907; re-en. Sec. 10468, R. C. M. 1921; amd. Sec. 1, Ch. 209, L. 1947; amd. Sec. 80, Ch. 199, L. 1965.

Amendment

The 1965 amendment substituted "Montana children's center" for "state orphan's home" near the end of the first sentence.

Jurisdiction Based on Service

The district court lacked jurisdiction to

find a minor child dependent and neglected and to award her to the care of the child welfare service when service of citation was by publication and there was no service of notice of the action on the father who was a resident of the county. In re Young, 143 M 230, 388 P 2d 379.

References

Cited or applied in State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 121.

10-505. State department of public welfare successor to bureau, etc.

References

Cited or applied in State ex rel. Cowan v. District Court, 131 M 502, 312 P 2d 119, 121.

10-506. Duty of county board to investigate and report, when. Whenever any petition is filed with the clerk of a district court in accordance with the provisions of section 10-503, and after citation has been issued as provided in section 10-504, the clerk of such court must immediately deliver to the county board of public welfare of the county in which the petition is filed, a copy of such petition with a notation thereon giving the day and time fixed by the court for hearing such petition. Upon receipt of such copy of petition it shall be the duty of some member of the staff of such county board of public welfare to make an investigation for the purpose of ascertaining whether the parents or parent, if any, of such child live within such county and the financial ability of such par-

ents or parent, if any, to pay the cost of taking care of such child in a foster home, and must file with the clerk of such court, before the time fixed for such hearing, a written report of such investigation.

History: En. Sec. 2, Ch. 145, L. 1943; **Amendment**
amd. Sec. 78, Ch. 199, L. 1965.

The 1965 amendment deleted "or in the Montana state orphans' home" after "foster home" near the end of the section.

10-507. Hearing of petition—evidence regarding financial ability of parents—court order—allocation of cost. On the hearing the court may hear evidence regarding the financial ability of any such parents or parent, to pay such cost, and may take into consideration the report of such investigation filed with the clerk of the court, as provided in section 10-506. And if, on such hearing, the court shall find and determine that said child has parents, or a parent, who is financially able to pay a part or the whole of such cost, and such child shall be ordered placed in a foster home, the court shall make an order requiring such parents, or parent, to pay therefor such amount as the court may deem proper.

If such child be placed in a foster home the state department of public welfare shall pay one-half ($\frac{1}{2}$) of the cost thereof, and the county in which such child resides shall pay the other one-half ($\frac{1}{2}$) thereof, and in turn shall collect in its own name from any parent or parents such amount, if any, as the court has specified in its order to be paid by such parent or parents, provided that one-half ($\frac{1}{2}$) of any amount collected by the county from a parent or parents, when a child is placed in a foster home, shall be transmitted to the state department of public welfare, and by it paid over to the state treasurer, who shall deposit the same to the credit of the state general fund.

History: En. Sec. 3, Ch. 145, L. 1943;
amd. Sec. 1, Ch. 170, L. 1961; amd. Sec.
79, Ch. 199, L. 1965.

Amendments

The 1961 amendment substituted the words "Montana children's center" for "orphans' home" each time they appear and increased the county contribution formerly specified in the second sentence from \$10.00 to \$25.00.

The 1965 amendment divided the section into two paragraphs; deleted "placed in the said Montana children's center or" before "placed in a foster home" in the

second sentence of the first paragraph; and deleted "and if on such hearing any child shall be ordered placed in the said Montana children's center, the county in which such child resides shall pay to said Montana children's center twenty-five dollars (\$25.00) per month for such time as the child shall remain therein, and in turn shall collect in its own name from any parent or parents such amount, if any, as the court has specified in its order to be paid by such parent or parents" at the end of the second sentence of the first paragraph.

10-509. (10470) Commitment of child to children's center or other disposition. Upon the hearing of any such case, if the said child shall be found to come within any of the provisions of section 10-501, it shall be deemed a dependent or neglected child, and an order may be entered committing it to the Montana children's center; and if said center is unable to receive said child, or if, from any other reason, it shall appear to be to the best interest of said child, the court may make such disposition of said child as seems best for its social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana, County of _____, ss:
In the District Court for the _____ judicial district.

On the _____ day of _____, 19____, a minor of this county was charged on the petition of _____, the County Attorney of _____ county, with being a dependent and neglected child under the provisions of chapter 5, Title 10, R. C. M. 1947. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian, or other person having custody of him.

The names, addresses and occupations of the parents are:

Name	Address	Occupation
_____	_____	_____
_____	_____	_____

The child's guardian is _____.
The child is in the custody of _____.
It is ordered that _____ be committed to _____
_____ until discharged as provided by law.
Witness my hand this _____ day of _____ A. D. 19____.

Judge

History: En. Sec. 6, Ch. 92, L. 1907; re-en. Sec. 7834, Rev. C. 1907; re-en. Sec. 10470, R. C. M. 1921; amd. Sec. 81, Ch. 199, L. 1965.

Amendment
The 1965 amendment inserted "or neglected" after "dependent" in the first

sentence; substituted "Montana children's center" and "center" for "state orphans' home" and "home" in the first sentence; substituted "social" for "moral" before "and physical welfare" at the end of the first sentence; and added the second sentence together with the form.

10-512. (10473) **Suspension of sentence.** The court may suspend any sentence hereunder, or release any person sentenced under this act from custody, upon condition that such person shall furnish a good and sufficient bond or undertaking to the state of Montana, in such penal sum, not exceeding two thousand dollars, as the court shall determine, conditioned for the payment of (1) such amount as the court may order, not exceeding twenty-five dollars per month for each child, for the support, care, and maintenance of such child while under the guardianship or in the custody of any individual or any public, private, or state home, institution, association, or orphanage, other than an institution in the department of institutions, to which the child may have been committed or entrusted under the provisions of the law of the state concerning dependent and neglected children, or (2) the per diem charge established by the department of institutions for each child committed to the Montana children's center.

History: En. Sec. 9, Ch. 92, L. 1907; re-en. Sec. 7837, Rev. C. 1907; re-en. Sec. 10473, R. C. M. 1921; amd. Sec. 82, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted the designation for clause (1); inserted "other than an institution in the department of institutions" after "or orphanage" in clause (1); and added clause (2).

10-524. Payment for board and room of dependent and neglected children—reimbursement by county. Whenever agreements are entered into by the department of public welfare for placing dependent and neglected children in approved family foster homes or licensed private institutions, it shall be the duty of the state department to pay by its check or draft, each month, from any funds appropriated for that purpose, the entire amount agreed upon for board and room of such children.

On or before the twentieth of each month the state department shall present a claim to the county of residence of such children for one-half the payments so made during the month. The county must make reimbursement to the state department within twenty days after such claim is presented.

History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965.

Repealing Clause

Section 2 of Ch. 194, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1965 amendment inserted "or licensed private institutions" after "approved family foster homes" in the first paragraph.

CHAPTER 6—JUVENILE COURTS AND PROCEEDINGS AGAINST JUVENILE DELINQUENTS

- Section 10-602. Definitions.
 10-611. Hearing—judgment.
 10-612. Form of commitment to state juvenile facility.
 10-617. Penalty for improper and negligent training of children.
 10-622. Probation officers—appointments—removal—salaries.
 10-632. Institutional and welfare laws not repealed.
 10-633. Publicity forbidden.

10-601. Construction and purpose of the act.

Cross-Reference

Application of Montana Rules of Civil Procedure to this chapter, see M. R. Civ. P., Rule 81(a), Table A.

Repeal of Conflicting Laws

By the enactment of chapter 227, Laws of 1943, and its amendments covering juveniles and creating juvenile courts, the legislature intended to repeal all prior

laws in conflict therewith, and amended the general criminal code insofar as it conflicts with the statutes relating to juveniles. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 499.

References

Cited or applied in Application of Bansbach, 133 M 312, 323 P 2d 1112, 1113.

10-602. Definitions. (1). * * * [Same as parent volume].

(2) The words "delinquent child" include:

(a) A child who has violated any ordinance of any city.

(b) A child who has violated any law of the state, provided, however, a child over the age of sixteen (16) years who commits or attempts to commit murder, manslaughter, rape when committed under the circumstances specified in subdivision 3 and 4 of section 94-4101, R.C.M. 1947, arson in the first and second degree, assault in the second degree, assault in the first degree, robbery, first or second degree burglary while having in his possession a deadly weapon, and carrying a deadly weapon or

weapons with intent to assault, shall not be proceeded against as a juvenile delinquent but shall be prosecuted in the criminal courts in accordance with the provisions of the criminal laws of this state governing the offenses above listed.

(c) A child who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian, or custodian.

(d) A child who is habitually truant from school or home.

(e) A child who habitually so deports himself as to injure or endanger the morals or the health of himself or others.

(f) A child who unlawfully, negligently, dangerously, or wilfully operates a motor vehicle on the highways of the state or on the roads and streets of any county or city so as to endanger life or property, and a child who operates a motor vehicle on such highways, roads or streets while intoxicated or under the influence of intoxicating liquor.

History: En. Sec. 2, Ch. 227, L. 1943; amd. Sec. 1, Ch. 276, L. 1947; amd. Sec. 1, Ch. 24, L. 1963.

was not in compliance with section 10-606. State v. Johnson, 141 M 1, 374 P 2d 504, 506.

Amendment

The 1963 amendment inserted the words "rape when committed under the circumstances specified in subdivision 3 and 4 of section 94-4101, R. C. M. 1947, arson in the first and second degree, assault in the second degree" in paragraph (2) (b).

Citation to Parents

Although youths admitted violations contained in the petition while on the stand, court was without jurisdiction to order commitment where second hearing proceeded upon citation to parents which

Criminal Court Jurisdiction

The words "and carrying a deadly weapon or weapons with intent to assault" do not modify robbery or any of the other specifically listed crimes; therefore, as to the crime of robbery, possession of a weapon need not be charged. State ex rel. Keast v. District Court, 136 M 367, 348 P 2d 135. (Dissenting opinion, 136 M 367, 348 P 2d 135, 139.)

References

Cited in State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 497.

10-603. Jurisdiction.

Right to Trial by Jury

Where a minor, charged with being a delinquent, made a demand for a jury trial on the day preceding the trial and at the opening of the trial, the court was without jurisdiction to try him without a jury. Application of Banschbach, 133 M 312, 323 P 2d 1112, 1113.

A child under the age of 16 years may never be tried for a law violation in the district court. He is solely under the exclusive jurisdiction of the juvenile court. State ex rel. Dahl v. District Court, 134 M 395, 333 P 2d 495, 498, 499.

References

In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-604. Jury.

References

Cited or applied in Application of Banschbach, 133 M 312, 323 P 2d 1112,

1115; In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-605. Information—investigation—petition.

Informal Hearing

This section and section 10-611 must be read together and the informal manner in which a hearing may be conducted as

provided in section 10-611 refers to the preliminary inquiry provided for in this section. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

Substance of Petition

The substance of the petition under this section must be the facts which bring the

child within the provisions of section 10-602. *State v. Johnson*, 141 M 1, 374 P 2d 504, 506.

10-606. Citation—notice—custody of the child.**Defective Citation**

A citation was fatally defective where it failed to recite substance of petition. *State v. Johnson*, 141 M 1, 374 P 2d 504, 506.

tional if the parties voluntarily appear. *In re Gonzalez*, 139 M 592, 366 P 2d 718, 720.

Jurisdiction

The issuance of a citation in a delinquent child proceeding is not jurisdic-

References

In re Allamaras, 139 M 130, 361 P 2d 340.

10-607. Service of citation.**Personal Service**

Service of the citation on an adult brother of the child's father at the father's home was not sufficient service on the father. *In re Allamaras*, 139 M 130, 361 P 2d 340, explained in 139 M 592, 366 P 2d 718.

References

In re Gonzalez, 139 M 592, 366 P 2d 718, 720; *State v. Johnson*, 141 M 1, 374 P 2d 504, 505.

10-610. Transfer from other courts.**Criminal Information**

District criminal court has no jurisdiction to authorize or order the filing of a criminal information against a juvenile child of the age of 15 years and less than

16 years of age, nor to try such child in the district court. *State ex rel. Dahl v. District Court*, 134 M 395, 333 P 2d 495, 497.

10-611. Hearing—judgment. The court may conduct the hearing in an informal manner and may adjourn the hearing from time to time. In the hearing of any juvenile case, as distinguished from a case involving a child charged with the commission of or attempt to commit any of the criminal offenses set out in subdivision (2)(b) of section 10-602, the general public shall be excluded and only such persons admitted as have a direct interest in the case; provided, however, that whenever the hearing in the juvenile court is had on a written petition charging the commission of any felony, persons having a legitimate interest in the proceeding, including responsible representatives of public information media, shall not be excluded from such hearing. All cases involving children shall be heard separately and apart from the trial of cases against adults.

If the court shall find that the child is delinquent within the provisions of this act, it may by order duly entered proceed as follows:

(1) Place the child on probation or under supervision upon such terms as the court shall determine.

(2) Commit the child to a suitable public institution or agency or to a suitable private institution or agency incorporated under the laws of the state, approved by the state department of public welfare, and authorized to care for children; or to place them in suitable foster homes, approved by the department of public welfare, or the probation department.

(3) Order such further care and treatment as the court may deem best for the best interests of the child, except as herein otherwise provided.

No commitment of any such delinquent child to any institution under

this act shall be deemed commitment to a penal institution. No adjudication upon the status of any delinquent child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any delinquent child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of any crime in any court except as provided in the preceding section of this act. The disposition of the delinquent child or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding.

Whenever the court shall commit a delinquent child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning such child.

Whenever a child or an adult under the age of twenty-one (21) years is convicted of a felony or felonies or attempt to commit a felony or felonies and is sentenced to imprisonment in the state prison, he shall, throughout the term of imprisonment or until such time as he reaches the age of twenty-one (21) years, be kept separate and apart at all times from those inmates who are over the age of twenty-one years.

History: En. Sec. 10, Ch. 227, L. 1943; amd. Sec. 5, Ch. 276, L. 1947; amd. Sec. 1, Ch. 132, L. 1961.

Amendment

The 1961 amendment added the proviso to the second sentence of the first paragraph.

Due Process

Even though a hearing may be informal, the requirements of due process must be met; where there was no sworn testimony, no proof, no representation by counsel, no proper citation to the parent, and no hearing in fact, an order of commitment to the industrial school was reversible. In re Allamaras, 139 M 130, 361 P 2d 340, explained in 139 M 592, 596, 366 P 2d 718, 720.

Informal Hearing

This section and section 10-605 must be read together and the informal man-

ner in which a hearing may be conducted as provided in this section refers to the preliminary inquiry provided for in section 10-605. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

An informal trial is improper when the hearing is upon a petition of county attorney charging a minor child, sixteen years of age, with being a delinquent child, which could result in commitment. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

Stenographic Record of Evidence

Proceeding upon a petition of county attorney charging minor with being a delinquent child, resulting in commitment of child to industrial school, was remanded to district court where no stenographic record had been made of the evidence presented in the juvenile court. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-612. Form of commitment to state juvenile facility. Whenever under the provisions of this act the court orders a delinquent child committed to the state vocational school for girls, state industrial school or other state department of institutions juvenile facility, the form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana, County of _____, ss: _____
In the district Court for the _____ judicial district.

On the _____ day of _____, 19____,
a minor of this county, _____ years of age, was brought before me

charged with _____. Upon due proof I find that _____
is a suitable person to be committed to _____.

It is ordered that _____ be committed to _____ until
_____ attains the age of 21 or is sooner legally discharged or placed out.

The names, addresses and occupations of the parents are:

Name	Address	Occupation
_____	_____	_____
_____	_____	_____

The names and addresses of other near relatives are:

Witness my hand this ____ day of _____ A.D. 19__.

Judge

History: En. Sec. 11, Ch. 227, L. 1943;
amd. Sec. 83, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted refer-
ences to the vocational school for girls

and to "other state department of insti-
tutions juvenile facility"; substituted the
form for a reference to a form formerly
contained in section 80-815; and made
minor changes in phraseology.

10-617. Penalty for improper and negligent training of children. Any parent or parents, legal guardian, or any other person who shall encourage, wilfully cause or contribute to, or through negligence in the care, custody, guidance, education, maintenance, or direction of any child under eighteen years of age, cause or permit such child to violate any law of this state, or the ordinance or ordinances of any city of this state, or to be or become incorrigible, or to knowingly associate with thieves, vicious or immoral persons; or to grow up in idleness or crime, or to knowingly enter a house of prostitution; or to knowingly visit or patronize any place, house, or apartment building where any gambling device is or gambling devices are or shall be operated or run, or where any gambling is done or conducted, or to patronize or visit any saloon or saloons, or dram shop or dram shops, where intoxicating liquors are sold, or to wander about the streets of any town or city in the nighttime, without being on lawful business or occupation, or to habitually wander about or visit any railroads or tracks, or to jump or hook on to any moving train or to enter any car or engines, without lawful authority; to use habitually any vile, obscene, vulgar, profane, or indecent language, or to be guilty of immoral conduct in any public place, or about any schoolhouse or grounds, or keep or permit it in or about any saloon or place where spirituous liquors or intoxicating liquors are sold, or in any gambling house or place where gambling is practiced, or in a house of ill fame or prostitution; or to become addicted to the use of spirituous and intoxicating liquors not for medicinal purposes prescribed by a physician; shall be guilty of a misdemeanor and upon trial and conviction thereof shall be fined in a sum not less than ten dollars (\$10.00) and not to exceed one thousand dollars (\$1,000.00), or imprisonment in the county jail for a period not exceeding nine (9) months, or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 227, L. 1943; amd. Sec. 1, Ch. 22, L. 1959.

Amendment

The 1959 amendment inserted the word "any" after the words "legal guardian, or" near the beginning of this section; deleted the words "or to patronize or visit any public poolroom or poolrooms, or

bucketshop" which appeared after the words "where intoxicating liquors are sold"; made the word "railroad" plural, and deleted the word "yards" which had appeared after the word "railroad."

Repealing Clause

Section 2 of Ch. 22, Laws 1959 repealed all acts and parts of acts in conflict therewith.

10-622. Probation officers—appointments—removal—salaries. In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one discreet person of good moral character, who shall be known as the chief probation officer of such district and who shall hold his office until removed by the court. Such officer shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed six thousand nine hundred dollars (\$6,900.00), or on a per diem basis for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be apportioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the assessed valuation of such counties for the year then current, except that where such official is appointed for one county, his salary shall be paid by that county.

The judge having jurisdiction of juvenile matters may also appoint such additional persons to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer.

History: En. Sec. 21, Ch. 227, L. 1943; amd. Sec. 1, Ch. 116, L. 1947; amd. Sec. 1, Ch. 27, L. 1951; amd. Sec. 1, Ch. 112, L. 1953; amd. Sec. 1, Ch. 36, L. 1955; amd. Sec. 1, Ch. 177, L. 1957; amd. Sec. 1, Ch. 166, L. 1961; amd. Sec. 1, Ch. 115, L. 1963; amd. Sec. 1, Ch. 94, L. 1965.

Amendments

The 1961 amendment increased the yearly salary specified in the second sentence of the first paragraph from \$4,800 to \$5,400; and, at the end of the section, deleted "or four thousand three hundred twenty dollars (\$4,320.00) per year."

The 1963 amendment increased the yearly salary specified in the second sentence of the first paragraph from \$5,400 to \$6,000.

The 1965 amendment increased the yearly salary specified in the second sen-

tence of the first paragraph from \$6,000 to \$6,900.

Repealing Clauses

Section 2 of Ch. 166, Laws 1961 and Sec. 2 of Ch. 115, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Section 2 of Ch. 94, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 166, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 6, 1961.

Section 3 of Ch. 115, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

10-629. County attorney to prosecute.

References

In re Gonzales, 139 M 592, 366 P 2d 718, 720.

10-630. Appeals.**Bill of Exceptions**

A juvenile who appeals from a commitment by virtue of the provisions of this section has the right to have the evidence presented in the district court

settled in a bill of exceptions and brought before the supreme court for a review under section 93-5505. In re Gonzalez, 139 M 592, 366 P 2d 718, 720.

10-632. Institutional and welfare laws not repealed. Nothing in this act shall be construed to repeal any portion of the acts relating to the state vocational school for girls or state industrial school, or the act or acts relating to the state department of public welfare or the public welfare act.

History: En. Sec. 33, Ch. 227, L. 1943; amd. Sec. 84, Ch. 199, L. 1965.

Amendment

The 1965 amendment substituted "state

vocational school for girls or state industrial school" for "industrial and vocational schools" and "state department of public welfare" for "bureau of child and animal protection."

10-633. Publicity forbidden. No publicity shall be given to the identity of an arrested juvenile or to any matter or proceeding in the juvenile court involving children proceeded against as, or found to be, delinquent children, except where a hearing or proceeding is had in the juvenile court on a written petition charging the commission of any felony.

History: En. Sec. 12, Ch. 276, L. 1947; amd. Sec. 2, Ch. 132, L. 1961.

Amendment

The 1961 amendment, after the words "shall be given" inserted the words "to the identity of an arrested juvenile or" and at the end of the section, added "except where a hearing or proceeding is had in the juvenile court on a written petition charging the commission of any felony."

Repealing Clause

Section 3 of Ch. 132, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 132, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

CHAPTER 8—DAY CARE FACILITIES FOR CHILDREN

Section 10-801. Definitions.

10-802. License required—term of license—no fee charged.

10-803. Standards for child care.

10-804. Fire safety—certification required by state fire marshal.

10-805. Health protection—certificate required by state board of health.

10-806. Licenses issued by the board of public welfare—rules and regulations—minimum requirements of licensees.

10-807. Provisional license.

10-808. License—renewal.

10-809. Supervision—inspection—consultation—records—reports.

10-810. License—denial—nonrenewal—revocation—hearing.

10-811. Violations.

10-801. Definitions. The word "child" wherever used in this act shall mean any person under twelve years of age. "Day Care Facility" shall mean any person, group of persons, association or place, incorporated or unincorporated, that receives for care during the day or a part of the day three or more children of separate families and continues this type of care for five or more consecutive weeks. It excludes the person who limits care to children who are related to him by blood or marriage or under his

legal guardianship and all group facilities established chiefly for educational purposes. "Family Day Care Home" shall mean a family home that receives from three to six children of separate families for care during the day or part of the day for five or more consecutive weeks. "Day Care Center" shall mean any day care facility that receives seven or more children for care for five or more hours of the day for five or more consecutive weeks. It may include facilities known as child care centers, nursery schools, day nurseries, and centers for the mentally retarded.

History: En. Sec. 1, Ch. 247, L. 1965.

Title of Act

An act relating to the licensing of day care facilities for children.

10-802. License required—term of license—no fee charged. No person, group of persons, or corporation shall establish and maintain a day care facility for children unless licensed to do so by the state board of public welfare. The license shall be valid for one year. There shall be no fee for the license.

History: En. Sec. 2, Ch. 247, L. 1965.

10-803. Standards for child care. The state board of public welfare shall prescribe and publish minimum standards for a license. In developing these standards the department shall seek the advice and assistance of the state board of health and superintendent of public instruction, representatives of day care facilities, specialists in child care, and representatives of parent groups who use the services of day care facilities. The standards may pertain to:

- (a) character, suitability, and qualifications of applicant, and other persons directly responsible for the care of children
- (b) the number of individuals or staff required for adequate supervision and care of children in day care centers
- (c) child care programs and practices essential to the protection of health, safety, development, and well-being of children
- (d) adequate and appropriate admission policies
- (e) adequacy of physical facilities and equipment
- (f) general financial ability and competence of applicant to provide necessary care for children and maintain prescribed standards.

History: En. Sec. 3, Ch. 247, L. 1965.

10-804. Fire safety—certification required by state fire marshal. The state fire marshal shall adopt, promulgate, and enforce rules and regulations for the protection of children in care facilities from fire hazards, and arrange for such inspections and investigations as he deems necessary. Each applicant for a license to operate a day care center shall submit to the department of public welfare a certificate of approval indicating that fire safety rules and regulations have been met before a license can be issued, provided that in all nonfire-resistant homes two stories or more in height with ten or more children, automatic sprinkler systems acceptable to the state fire marshal shall be installed, with said state fire marshal to issue for the information and use of the board, certificates of compliance with fire regulations and standards applicable to the facilities.

History: En. Sec. 4, Ch. 247, L. 1965.

10-805. Health protection—certificate required by state board of health. The state board of health shall adopt rules and regulations for the protection of children in day care centers from the health hazards of overcrowding, food preparation and communicable diseases and arrange for such inspections and investigations as it deems necessary. Each applicant for a license to operate a day care center shall submit to the board of public welfare a certificate of approval that state board of health rules and regulations have been met before a license can be issued.

History: En. Sec. 5, Ch. 247, L. 1965.

10-806. Licenses issued by the board of public welfare—rules and regulations—minimum requirements of licensees. The state board of public welfare is hereby authorized and directed to issue licenses to persons to receive into a day care facility, children for care during the day or part of a day. This includes agencies now caring for such children who may desire to operate as a day care facility in the future. Application for a license shall be made to the state board of public welfare through the county department of public welfare in the county in which the applicant lives, on forms prescribed by the state board. Upon receipt of the application, the state board of county welfare department, shall, within a reasonable time, make an investigation to determine whether or not a license should be granted.

The state board of public welfare shall prescribe the conditions upon which such licenses are issued, and will make such rules and regulations for the conduct of the affairs of such facilities as are consistent with the welfare of the children received, provided; however, that the said state board of public welfare must issue licenses to agencies meeting the following minimum requirements;

(a) the applicant, his employees, and all those persons who will come in direct contact with the children shall be of good moral character

(b) the staff of the facility shall be sufficient in number to provide adequate supervision and care of the children admitted

(c) essential programs and practices carried on by the facility staff shall be developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children

(d) applicant and staff shall be qualified by practical experience or education or training, to give good care and treatment to the children

(e) physical facilities shall be of a kind that can meet the minimum state standards to provide for the protection of the children from fire and health hazards

(f) intake records shall be kept on each child admitted for care. Public liability insurance and fire insurance shall currently be in force for the protection of the operator, his staff and the facility

(g) the applicant and staff will limit admissions to the maximum number indicated on the current license

(h) the applicant will arrange for the necessary precautions to guard against communicable diseases.

History: En. Sec. 6, Ch. 247, L. 1965.

10-807. **Provisional license.** The state board of public welfare may, in its discretion, issue a provisional license for a period of not more than six months if it finds that a substandard day care facility is attempting to meet the minimum standards. The requirement that a day care center shall be certified by the state fire marshal and the state board of health may not be waived.

History: En. Sec. 7, Ch. 247, L. 1965.

10-808. **License—renewal.** If a licensed day care facility desires to apply for a renewal of its license, a request for renewal shall be made in writing to the state board of public welfare ten days prior to the expiration of its license.

History: En. Sec. 8, Ch. 247, L. 1965.

10-809. **Supervision—inspection—consultation—records—reports.** It shall be the duty of the board of public welfare or their authorized representative to make periodic visits to all licensed day care facilities to insure that minimum standards are maintained and to give consultation upon request to every licensee who desires to upgrade the services of his facility. It shall be the duty of the board or their authorized representative to assist applicants in meeting the minimum requirements. It shall be the duty of every applicant and every licensee to give right of entrance and inspection of premises to representatives of the board, at reasonable times, to keep and maintain such records as the board may prescribe, to permit inspection of these records, and to report to the board such facts as may be required on blanks furnished by the board.

History: En. Sec. 9, Ch. 247, L. 1965.

10-810. **License — denial — nonrenewal — revocation — hearing.** The board, after notice and opportunity for hearing to the applicant of [or] licensee, is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law. Such notice shall be effected by registered mail, or by personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of such mailing or service, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing, or upon default of the applicant or licensee the board shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served, unless the applicant or licensee within such thirty (30) days' period, commences an action in the district court, pursuant to this section. The procedure governing hearings authorized by this section shall be in accordance with rules promulgated by the board with the advice of the advisory council. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision

is reviewed pursuant to this section. A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies. Witnesses may be subpoenaed by either party.

Any applicant or licensee of the state aggrieved by the decision of the board after a hearing, may, within thirty (30) days after mailing or serving of notice of the decision as provided in this section, commence an action in the district court of the county in which the long term care facility is located or to be located, by the filing of a verified complaint against the board as defendant, and summons shall issue and all further proceedings be conducted as in the case of ordinary civil actions. The board shall, upon filing its answer, certify and file therewith in the court wherein the action is pending a certified copy of the record and decision, including the complete transcript of the hearings on which the decision is based. Findings of fact by the board shall be conclusive unless substantially contrary to the weight of the evidence, or unless in conflict with law, but upon good cause shown the court may remand the case to the board to take further evidence, and the board may thereupon affirm, reverse or modify its decision. The court may affirm, modify or reverse the decision of the board and either the applicant or licensee or the board or state may apply for such further review by appeal or otherwise, as is provided by law. Pending final disposition of the matter the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest.

History: En. Sec. 10, Ch. 247, L. 1965.

10-811. Violations. Whenever the board of public welfare is advised or has reason to believe that any person, group of persons, or corporation is operating a child care facility without a license, it shall make an investigation to ascertain the facts. If it finds that such child care facility is being, or has been, operated without a license, it may report the results of its investigation to the attorney general of this state or the county attorney of the county where the child care facility is being operated for prosecution and request that an injunction be issued against the facility until a license is issued. In addition to the foregoing, the state board of public welfare, or its authorized agent, may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this act, or to enforce compliance with any order, rule, or regulation of the board pursuant to the provisions of this act, or to obtain a judicial interpretation of any of the foregoing, and in addition to any other remedy, the board, under unanimous consent of all its members, may apply to the district court of the district wherein the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwise exist, nor shall the board be required to give or post bond in any action to which it is a party, whether upon appeal or otherwise. All legal actions may be brought by or against the board in the name of Montana state board of public welfare, and it shall not be necessary in any action to which the board is a party, that such action be brought by or against the state of Montana on relation of the

Montana state board of public welfare. The board shall have the power to institute action by its own attorney or counsel, but it shall have the right, if it deems advisable, to call upon any county attorney to represent it in the district court of the county in which the action is taken, or the attorney general to represent it on appeal to the supreme court of Montana, or it may associate its own counsel with either in any court.

History: En. Sec. 11, Ch. 247, L. 1965.

CHAPTER 9—REPORTS OF CHILD NEGLECT OR ABUSE

- Section 10-901. Declaration of policy.
 10-902. Reports.
 10-903. Action on reporting.
 10-904. Immunity from liability.
 10-905. Admissibility of evidence.

10-901. Declaration of policy. It is the policy of this state to provide for the protection of children who have had physical injury or willful neglect inflicted upon them and who, in the absence of appropriate reports concerning their condition and circumstances, may be further threatened by the conduct of those responsible for their care and protection.

History: En. Sec. 1, Ch. 178, L. 1965.

Title of Act

An act providing for the reporting of physical abuse or willful neglect of children; providing for action to be taken by the county attorney in cases where such

reports are made; providing immunity from liability for those persons participating in making such reports; and providing for the admissibility of such reports into evidence in proceedings which result from the making of such reports.

10-902. Reports. Any licensed physician and surgeon, resident or intern, who examines, attends or treats a child under the age of eighteen (18) years, or any registered nurse, practical nurse, any visiting nurse, any schoolteacher, or any social worker acting in his or her official capacity, having reason to believe that such child has had serious injury or injuries inflicted upon him or her as a result of abuse or neglect, or has been willfully neglected, shall report the matter promptly to the county attorney in the county where such examination is made or such child is located, provided that when attendance with respect to a child is pursuant to the performance of services as a member of the staff of a hospital or similar institution, such staff member shall immediately notify the superintendent, manager, or other person in charge of the institution who shall make the report forthwith. If the report is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as soon as it conveniently may be after it is initially made by telephone or otherwise, and it shall contain the names and addresses of the child and his or her parents or other persons responsible for his or her care; to the extent known, the child's age, the nature and extent of the child's injuries (including any evidence of previous injuries), and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of the person or persons responsible therefor, and the facts which led the

person reporting to believe that the child has suffered injury or injuries, or willful neglect, within the meaning of this act.

History: En. Sec. 2, Ch. 178, L. 1965.

10-903. Action on reporting. If from said report it shall appear that the child suffered such injury or injuries or willful neglect in the county in which the examination was made, the county attorney receiving the report shall immediately cause to be made the investigation hereinbelow referred to. If from such report it shall appear that the child suffered such injury or injuries or willful neglect in a county other than that in which the examination was made, the county attorney receiving the report shall forthwith transmit such report to the county attorney of the county in which it appears such injury or injuries or willful neglect were suffered, and the county attorney of the latter county shall immediately cause to be made the investigation herein referred to. In making such investigation of the report, the county attorney may utilize the services of the county welfare department and all other departments of his county. The investigation shall be made into the home of the child involved and into the circumstances surrounding the injury of the child, and into all other matters which, in the discretion of the county attorney shall be relevant and material to said investigation.

History: En. Sec. 3, Ch. 178, L. 1965.

10-904. Immunity from liability. Anyone participating in the making of a report pursuant to the provisions of this act or participating in a judicial proceedings resulting therefrom shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless the person acted in bad faith or with malicious purpose.

History: En. Sec. 4, Ch. 178, L. 1965.

10-905. Admissibility of evidence. In any proceeding resulting from a report made pursuant to the provisions of this act or in any proceeding where such a report or any contents thereof are sought to be introduced into evidence, such report or contents thereof or any other fact or facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

History: En. Sec. 5, Ch. 178, L. 1965.

TITLE 11—CITIES AND TOWNS

- Chapter 4. Additions of platted tracts to cities and towns, 11-403.
6. Plats of cities and towns and additions thereto, 11-616.
7. Officers and elections, 11-710, 11-713 to 11-716, 11-725, 11-726, 11-728, 11-729, 11-731.
9. Powers of city and town councils, 11-918, 11-966, 11-986.
10. Powers of city and town councils (continued), 11-1001, 11-1024.
12. Contracts and franchises, 11-1202.
13. Presentation and payment of claims—city warrants, 11-1310.
18. Police department, metropolitan police law, 11-1804.1, 11-1806, 11-1814, 11-1823, 11-1834 to 11-1837.
19. Fire department—firemen's disability and pension fund, 11-1901, 11-1912, 11-1914, 11-1918 to 11-1921, 11-1925 to 11-1927.
20. Fire protection in unincorporated towns—fire wardens, companies and districts, 11-2007, 11-2008, 11-2010, 11-2022 to 11-2026, 11-2028 to 11-2030.
22. Special improvement districts, 11-2202, 11-2204, 11-2218, 11-2226, 11-2231, 11-2288.
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24. Municipal revenue bond act of 1939, 11-2402, 11-2404, 11-2414.
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39. Urban renewal law, 11-3901 to 11-3920.
40. Open ditches, 11-4001 to 11-4006.
41. Industrial development projects, 11-4101 to 11-4110.

CHAPTER 1—GENERAL POWERS OF CITIES AND TOWNS

11-104. (4958) City or town, how named, general corporate powers.

Tax Sales

County acquiring tax deeds to lots, advertised them for sale but received no offer. Purchase of lots by city being authorized by city council because of hous-

ing and sanitary conditions, it had the right to sell them at varying prices, much higher than purchase price paid to county. *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 501, 502.

CHAPTER 2—CLASSIFICATION AND ORGANIZATION OF CITIES AND TOWNS

11-201. (4959) Cities and towns classified.

References

Cited in *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 298.

CHAPTER 4—ADDITIONS OF PLATTED TRACTS TO CITIES AND TOWNS

Section 11-403. Extension of boundaries to include contiguous platted tracts or other parcels of land.

11-403. (4978) Extension of boundaries to include contiguous platted tracts or other parcels of land. (1) Cities or towns of the first class. Any

tracts or parcels of land, which have been or may hereafter be platted into lots or blocks, streets, and alleys, and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes, and which platted or unplatted land shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof, and the boundaries of such city of the first class extended so as to include the same in the following manner: When, in the judgment of any city council of a city of the first class, expressed by a resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants of any contiguous platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, that the boundaries of such city shall be extended, so as to include the same within the corporate limits thereof, the city clerk of such city shall forthwith cause to be published in the newspaper published nearest such platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty days after the first publication of such notice, such city clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city of the first class, from resident freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, the time when the same shall go into effect to be fixed by such resolution; provided however that land used for industrial or manufacturing purposes shall not be included in such city under the provisions of this section without the consent in writing of the owners of such land, and further provided, that such resolution shall not be adopted by such council if disapproved, in writing, by a majority of the resident freeholders, if any, of the territory proposed to be embraced and no further resolutions relating to the annexation of said territory or any portion thereof may be considered or acted upon by the council on its own initiative and without petition, for a period of one year from the date of disapproval.

Provided also, that cities of the first class may include as part of such city any platted or unplatted tract or parcel of land that is wholly surrounded by such city upon passing a resolution advertising and upon passing a further resolution or following such advertising, all in the manner aforesaid, and such land shall be annexed, if so resolved, whether or not a majority of the resident freeholders, if any, of the land to be annexed object; provided, however, that land used for agricultural, mining, smelting, refining, transportation, recreational area, or any industrial or

manufacturing purpose or for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery or a place for public or private outdoor entertainment or any purpose incident thereto, shall not be annexed under this provision.

(2) Cities and towns of the second and third class. Any tracts or parcels of land, which shall be contiguous to any incorporated cities or towns of the second and third class, may be embraced within the corporate limits thereof and the boundaries of such cities or towns of the second and third class extended so as to include the same in the following manner: When, in the judgment of any such city or town council, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city, or town and the inhabitants thereof, and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended, so as to include the same within the corporate limits thereof, the city or town clerk of such city or town shall forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced, and cause to be published in the newspaper published nearest such tracts or parcels of land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city or town, from freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city or town council after the expiration of said twenty days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town of the second or third class, shall be extended so as to embrace and include such tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council, if disapproved, in writing, by a majority of the freeholders of the territory proposed to be embraced.

(3) Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution under subdivision (2) hereof, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1925; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961.

Amendments

The 1959 amendment in subd. (1) deleted the phrase "and the inhabitants thereof" which appeared after the words "best interests of such city"; added the second paragraph of subd. (1), and changed the word "caused" to "cause"

which appeared after the words "proposed to be embraced, and" in subd. (2).

The 1961 amendment inserted the first proviso in the last sentence of the first paragraph of subd. (1); and, at the end of the first paragraph of subd. (1), added "and no further resolutions relating to the annexation of said territory or any portion thereof may be considered or acted upon by the council on its own initiative and without petition, for a period of one year from the date of disapproval."

Repealing Clauses

Section 2 of Ch. 238, Laws 1959 and Sec. 2 of Ch. 217, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 3 of Ch. 238, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

Section 3 of Ch. 217, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 7, 1961.

Appeal

In taxpayers' suit opposing annexation of a city subdivision where trial court found that less than the required majority had protested, it must be presumed on appeal that the lower court's proceedings are regular and contain no substantial error until otherwise shown preponderantly by the plaintiff. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 298.

Burden of Proof

A first class city has the burden of determining if a majority of the resident freeholders have protested the proposed annexation. *State ex rel. Konen v. City of Butte*, — M —, 394 P 2d 753, 755.

Description of Land Annexed

In annexation proceedings by a second class city the description of the land was adequate, although it omitted township and range, where the resolution stated that the land was contiguous to the boundaries of the city and referred to the intersections of streets. *Klamm v. City of Miles City*, 138 M 65, 353 P 2d 752, 754.

Disapproval by Residents

Residents of an area sought to be annexed must register their disapproval by showing such disapproval in writing to the city clerk as required by statute. They cannot do so in courts of law. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Time limitation for disapproval cannot be extended. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092, 1093.

The filing of sufficient protests by resident freeholders of a first class city deprives the city council of authority to do anything except to sustain the protests and terminate the proceedings. *State ex rel. Konen v. City of Butte*, — M —, 394 P 2d 753, 756.

If the majority of the resident freeholders of a first class city protest proposed annexation, the city is without jurisdiction to proceed with the annexation. *State ex rel. Konen v. City of Butte*, — M —, 394 P 2d 753, 756.

Discretion of City Council

City council has the discretion to determine whether or not it is in the best interests of the city and the inhabitants of the area that it be annexed. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092, distinguished in 138 M 65, 67, 353 P 2d 752, 753.

If less than a majority of the resident freeholders of a first class city protest, the city may, in its discretion, annex the area in question. *State ex rel. Konen v. City of Butte*, — M —, 394 P 2d 753, 756.

Evidence of Benefits

In action for injunctive relief against resolution of intention of city council to annex land court properly excluded all evidence relating to benefits. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Resident Freeholder

A freeholder becomes a resident under section 83-303 upon union of act and intent. If the intention to establish a permanent residence be ascertained, the recency of the establishment is immaterial. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

A resident freeholder qualified to protest annexation may be defined as one who is a resident within the area to be annexed, holding a present legal title to a freehold estate in real property located within the area to be annexed. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

Date through which timely protest could be received, set forth in the notice of resolution of intention to annex, as protest date, determines qualifications of resident freeholders to protest annexation. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

It is not necessary for resident freeholder to reside upon his freehold in order to protest annexation. *Kunesh v. Great Falls*, 132 M 285, 317 P 2d 297, 301.

Resolution of Intention

Exercise of discretion of city council in passing resolution of intention to annex land may be reviewed by court only when, and if, they have proceeded contrary to statute. *Penland v. Missoula*, 132 M 591, 318 P 2d 1089, 1092.

Termination of Proceedings

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under subdivision (1) of this section, but city council instead of terminating the annexation proceedings took arbitrary action, mandamus was proper to compel council to terminate the process. The Uniform Declaratory Judgment Act (93-8901 to 93-8916) did not furnish the protestants a plain, speedy

and adequate remedy. State ex rel. Konen v. City of Butte, — M —, 394 P 2d 753, 757.

Unplatted Territory

Unplatted territory may be annexed by a second-class city. Klammer v. City of Miles City, 138 M 65, 353 P 2d 752, 753.

11-404. Land when deemed contiguous.

Operation and Effect

Triangle piece of unplatted land separated area sought to be annexed into two tracts of land. Although the triangular strip was a part of a much larger tract, that fact was immaterial. The only part of the land which was significant was the strip separating the area sought to be an-

nexed, not the larger area of which the separating strip was a part. If the triangular separating strip is too small or too narrow to be platted, then the tracts separated by it will be deemed contiguous. Penland v. Missoula, 132 M 591, 318 P 2d 1089, 1093.

CHAPTER 6—PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

Section 11-616. Vacation of recorded plat.

11-602. (4981) What plat must contain.

Constitutionality

The requirement of subsection 9 of this section that a portion of platted subdivisions be dedicated to public park purposes is not an unconstitutional delegation of legislative authority to city and county

authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. Billings Properties, Inc. v. Yellowstone County, — M —, 394 P 2d 182.

11-614. (4993) Small and irregularly shaped tracts, etc.

Lots of Less Than Ten Acres

The exception to the requirement that specific portions of subdivided property be set aside for public parks and playgrounds applies only to indefinitely de-

scribed tracts and not to lots surveyed for building purposes. Billings Properties, Inc. v. Yellowstone County, — M —, 394 P 2d 182.

11-614.1. Approval of plats before filing—by whom to be done.

References

Billings Properties, Inc. v. Yellowstone County, — M —, 394 P 2d 182.

11-616. Vacation of recorded plat. Any plat prepared and recorded as herein provided may be vacated, either in whole or in part, as provided by section 11-2803 and 11-2801, Revised Codes of Montana, 1947, and upon such vacation the title to the streets and alleys of such vacated portions, to the center thereof, shall revert to the owners of the property adjacent to such vacated portions, provided that if any pole line, pipe line or other public utility facilities are located in any such vacated street or alley at the time of the reversion of the title thereto, the owner of such public utility facilities shall have an easement over such land to continue the operation and maintenance of such public utility facilities.

History: En. Sec. 1, Ch. 200, L. 1947; amd. Sec. 1, Ch. 152, L. 1961.

Amendment

The 1961 amendment inserted the reference to section 11-2801 and added the proviso at the end of the section.

CHAPTER 7—OFFICERS AND ELECTIONS

- Section 11-710. Qualification of mayor.
 11-713. Who eligible.
 11-714. Qualification of aldermen.
 11-715. Registration of electors.
 11-716. Qualifications of electors.
 11-725. Salaries and qualifications of mayor and aldermen.
 11-726. Salaries of police judges.
 11-728. Salary of city treasurer.
 11-729. Salary of city attorney.
 11-731. Salary of city or town clerk.

11-702. (4996) Officers of city of second and third classes.

Commissioner of Public Works

Commissioner of public works, appointed by the mayor, being a public officer of the city, was under a duty to account

for all funds which might come into his hands as such officer, including funds of public housing projects. *City of Roundup v. Liebetrau*, 134 M 114, 327 P 2d 810, 816.

11-710. (5004) **Qualification of mayor.** No person shall be eligible to the office of mayor unless he shall be at least twenty-five (25) years old and a taxpaying freeholder within the limits of the city or town, and a resident of the state for at least three years, and a resident of the city or town or an area which has been annexed by the city or town for which he may be elected mayor two years next preceding his election to said office, and shall reside in the city or town for which he shall be elected mayor during his term of office.

History: En. Sec. 8, p. 65, Ex. L. 1887; amd. Sec. 4749, Pol. C. 1895; re-en. Sec. 3225, Rev. C. 1907; re-en. Sec. 5004, R. C. M. 1921; amd. Sec. 1, Ch. 76, L. 1961.

Amendment

The 1961 amendment after the words

"twenty-five" inserted "(25)"; after the words "limits of the city" inserted the words "or town" and after the words "resident of the city" inserted the words "or town or an area which has been annexed by the city or town."

11-713. (5007) **Who eligible.** No person is eligible to any municipal office, elective or appointive, who is not a citizen of the United States, and who has not resided in the town or city or an area which has been annexed by such town or city for at least two years immediately preceding his election or appointment, and is not a qualified elector thereof.

History: En. Sec. 365, 5th Div. Comp. Stat. 1887; amd. Sec. 4752, Pol. C. 1895; re-en. Sec. 3228, Rev. C. 1907; re-en. Sec. 5007, R. C. M. 1921; amd. Sec. 2, Ch. 76, L. 1961.

Amendment

The 1961 amendment after the words "not resided in the town or city" inserted the words "or an area which has been annexed by such town or city."

11-714. (5008) **Qualification of aldermen.** No person shall be eligible to the office of alderman unless he shall be a taxpaying freeholder within the limits of a city, and a resident of the ward so electing him, or a resident of an area which has been annexed by the city or town and placed in a ward, for at least one year preceding such election.

History: En. Sec. 366, 5th Div. Comp. Stat. 1887; amd. Sec. 4753, Pol. C. 1895; re-en. Sec. 3229, Rev. C. 1907; re-en. Sec. 5008, R. C. M. 1921; amd. Sec. 3, Ch. 76, L. 1961.

Amendment

The 1961 amendment after the words "so electing him," inserted the words "or a resident of an area which has been annexed by the city or town and placed in a ward."

11-715. (5009) Registration of electors. The council must provide by ordinance for the registration of electors in any city or town, and may prohibit any person from voting at any election unless he has been registered; but such ordinance must not be in conflict with the general law providing for the registration of electors, and must not change the qualifications of electors except as in this title provided. However, when an area is annexed by a city or town after the date for registration has expired, opportunity must be provided for residents of such area to register, if otherwise qualified, for all future elections.

History: En. Sec. 4754, Pol. C. 1895; **Amendment**
 re-en. Sec. 3230, Rev. C. 1907; re-en. Sec. The 1961 amendment added the last
 5009, R. C. M. 1921; amd. Sec. 4, Ch. 76, sentence.
 L. 1961.

11-716. (5010) Qualifications of electors. All qualified electors of the state who have resided in the city or town or an area which has been annexed by such city or town for six months and in the ward or an area which has been annexed and placed in a ward for thirty days next preceding the election are entitled to vote at any municipal election, including elections involving or held under the commission form of government, commission-manager plan or other form of municipal government.

History: En. Sec. 4755, Pol. C. 1895; **in a ward" following "in the ward"; and**
 re-en. Sec. 3231, Rev. C. 1907; re-en. Sec. added the final clause of the section, be-
 5010, R. C. M. 1921; amd. Sec. 5, Ch. 76, ginning with the words "including elec-
 L. 1961. tions involving."

Amendment

The 1961 amendment inserted the words "or an area which has been annexed by such city or town" after "resided in the city or town"; inserted the words "or an area which has been annexed and placed

Effective Date

Section 6 of Ch. 76, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved February 27, 1961.

11-725. (5019) Salaries and qualifications of mayor and aldermen. The annual salary of a mayor must be fixed by ordinance, and in a city with a population of more than fifty thousand (50,000) persons, according to the last federal census, shall be not more than eight thousand four hundred dollars (\$8,400.00); the annual salary of a mayor of a city with a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons, according to the said census, shall be not more than seven thousand two hundred dollars (\$7,200.00); the annual salary of a mayor of a city of the first class, having a population of less than twenty-five thousand (25,000) persons, according to said census, must not exceed six thousand dollars (\$6,000.00); and the annual salary of the mayor of a city of the second class must not exceed three thousand six hundred dollars (\$3,600.00); and the annual salary of the mayor of a city of the third class must not exceed three thousand dollars (\$3,000.00); and each alderman in a city of the first class may be allowed and paid not exceeding twenty dollars (\$20.00) per diem for each day of session, to be fixed by ordinance; and aldermen of cities of the second and third class may be allowed and paid not exceeding sixteen dollars (\$16.00) per diem for each day of session, to be fixed by ordinance, but no alderman of second and third class cities shall be paid for more than

two (2) days' service during any one (1) month. The council of any town may by ordinance set compensation for a mayor and alderman at fifteen dollars (\$15.00) per meeting, but in no event shall they be paid to exceed two (2) meetings per month. No person shall be elected to the office of mayor or alderman in any city or town who is not a resident and freeholder within the limits of the city or town.

History: En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953; amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963; amd. Sec. 1, Ch. 158, L. 1965.

Amendments

The 1961 amendment inserted at the beginning of the first sentence the first two clauses, which pertain to the salaries of mayors of cities over 25,000 population; inserted in the third clause of the first sentence (formerly the first clause) the words "having a population of less than twenty-five thousand (25,000) persons, according to said census"; deleted a proviso which followed the clause pertaining to aldermen of first class cities and read "provided, that no alderman shall be paid for more than five (5) days' service during any one (1) month"; and inserted in the final clause of the first sentence the words "of second and third class cities."

The 1963 amendment increased salaries of mayors, in cities of the second class, from \$3,000 to \$3,200, and in cities of the

third class, from \$1,500 to \$1,700; substituted the phrase "fifteen dollars (\$15.00) per diem for each day of session, to be fixed by ordinance" for the phrase "twelve dollars (\$12.00) per diem to be fixed by ordinance, for each day of session held by city council" near the end of the first sentence; increased per diem of aldermen of cities of the second and third class from \$12 to \$14; and increased compensation of town mayor and alderman from \$2 to \$5 per meeting.

The 1965 amendment inserted "must be fixed by ordinance, and in" after "salary of a mayor" near the beginning of the section; increased the maximum salaries for mayors from \$7,200 to \$8,400 in cities of over 50,000, from \$6,000 to \$7,200 in cities of 25,000 to 50,000, from \$5,400 to \$6,000 in first class cities of under 25,000, from \$3,200 to \$3,600 in second class cities, and from \$1,700 to \$3,000 in third class cities; increased aldermen's per diem from \$15 to \$20 in first class cities and from \$14 to \$16 in second and third class cities; increased mayors' and aldermen's compensation for meetings from \$5 to \$15; and reduced the number of meetings for which mayors and aldermen may be compensated from three to two per month.

11-726. (5020) Salaries of police judges. The annual salary and compensation of police judges must be fixed by ordinance, and in a city of the first class having a population of more than fifty thousand (50,000) persons according to the last federal census, must not exceed, for all services rendered six thousand dollars (\$6,000.00); and in cities of the first class with a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons, according to the last federal census, the annual salary and compensation of police judges must not exceed, for all services rendered, five thousand four hundred dollars (\$5,400.00); in all other cities of the first class said salary and compensation must not exceed, for all services rendered, four thousand five hundred dollars (\$4,500.00); and in a city of the second class said salary and compensation must not exceed two thousand four hundred dollars (\$2,400.00); and in a city of the third class said salary and compensation must not exceed one thousand two hundred dollars (\$1,200.00); and, in addition, a police judge is entitled to receive in all civil cases the fees which are now or may hereafter be allowed justices of the peace. In all criminal actions or proceedings arising under the criminal laws of the state, when acting as a justice of the peace or committing magistrate, he must receive no compensation whatever; provided, however, that none of

the provisions of this act shall affect cities operating under the commission form of government.

History: En. Sec. 4765, Pol. C. 1895; re-en. Sec. 3241, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1919; re-en. Sec. 5020, R. C. M. 1921; amd. Sec. 2, Ch. 76, L. 1953; amd. Sec. 2, Ch. 179, L. 1961; amd. Sec. 2, Ch. 158, L. 1965.

Amendments

The 1961 amendment inserted in the first sentence the clauses pertaining to cities of over 50,000 and cities of 25,000 to 50,000; substituted "all other cities of the first class" for "a city of the first class"

in the first sentence; and inserted "said salary and compensation" before "must not exceed" in three different places in the first sentence.

The 1965 amendment increased the maximum annual salary and compensation from \$5,400 to \$6,000 in cities of over 50,000, from \$5,100 to \$5,400 in cities of 25,000 to 50,000, from \$4,200 to \$4,500 in other first class cities, from \$2,100 to \$2,400 in second class cities, and from \$1,000 to \$1,200 in third class cities.

11-728. (5022) Salary of city treasurer. The annual salary and compensation of the treasurer must be fixed by ordinance, and must be for all services rendered by such treasurer in any capacity, (except, however, in cases where a city of the third class or a town owns and operates a public utility or utilities and receives revenue therefrom as hereafter in this section provided) and no treasurer must be allowed any percentages or fees in addition thereto. In cities of the first class, the annual salary of the treasurer must not exceed six thousand dollars (\$6,000.00), in cities of the second class must not exceed thirty-six hundred dollars (\$3,600.00), and in cities of the third class it must not exceed twenty-four hundred dollars (\$2,400.00), and in towns it must not exceed eighteen hundred dollars (\$1,800.00); provided, however, that where a city of the third class, or a town shall own and operate a public utility or utilities such as water supply, waterworks, gas, lighting system, or utilities similar to the foregoing, and receives the revenue derived therefrom, then the treasurer of such city, or town, may be paid additional salary or compensation to be fixed by ordinance and the duties of the treasurer with reference to the collection and safekeeping of the revenues derived from such public utilities shall likewise be fixed by ordinance and the amount of such additional salary or compensation shall be in accordance with the additional duties and responsibilities placed upon the treasurer by reason of such public utility or utilities and shall be in such amount as the council may determine.

History: En. Sec. 4767, Pol. C. 1895; re-en. Sec. 3243, Rev. C. 1907; re-en. Sec. 5022, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1939; amd. Sec. 1, Ch. 46, L. 1947; amd. Sec. 3, Ch. 76, L. 1953; amd. Sec. 2, Ch. 170, L. 1955; amd. Sec. 3, Ch. 179, L. 1961; amd. Sec. 2, Ch. 142, L. 1963; amd. Sec. 3, Ch. 158, L. 1965.

Compiler's Note

Laws 1961, Ch. 179, Sec. 3 purported to amend this section but made no change therein. For 1961 text, see parent volume.

Amendments

The 1963 amendment increased salaries of treasurers in cities of the first class from \$4,500 to \$5,000, in cities of the second class from \$3,100 to \$3,400, in cities of the third class from \$1,500 to \$1,800, and in towns from \$1,200 to \$1,500.

The 1965 amendment increased the maximum annual salary and compensation from \$5,000 to \$6,000 in first class cities, from \$3,400 to \$3,600 in second class cities, from \$1,800 to \$2,400 in third class cities, and from \$1,500 to \$1,800 in towns.

11-729. (5023) Salary of city attorney. The annual salary and compensation of the city attorney must be fixed by ordinance, and must not exceed, in cities of the first class having a population in excess of fifty

thousand (50,000) persons according to the last federal census, six thousand dollars (\$6,000.00), and in cities of the first class having a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons according to the last federal census, the annual salary and compensation must not exceed fifty-four hundred dollars (\$5,400.00); and the annual salary and compensation of city attorneys in all other cities of the first class must not exceed five thousand one hundred dollars (\$5,100.00), and in cities of the second class must not exceed three thousand six hundred dollars (\$3,600.00), and in cities of the third class must not exceed two thousand four hundred dollars (\$2,400.00), which compensation shall be in full for all services rendered in any capacity, and no fee, percentage or additional compensation must be given to or allowed him.

History: En. Sec. 4768, Pol. C. 1895; re-en. Sec. 3244, Rev. C. 1907; re-en. Sec. 5023, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1943; amd. Sec. 2, Ch. 188, L. 1949; amd. Sec. 2, Ch. 115, L. 1951; amd. Sec. 4, Ch. 76, L. 1953; amd. Sec. 3, Ch. 170, L. 1955; amd. Sec. 4, Ch. 179, L. 1961; amd. Sec. 4, Ch. 158, L. 1965.

Amendments

The 1961 amendment inserted the clauses pertaining to cities of over 50,000 and to cities of 25,000 to 50,000; and in the clause

pertaining to other first class cities, inserted the words "and the annual salary and compensation of city attorneys in all other."

The 1965 amendment increased the maximum annual salary and compensation from \$5,400 to \$6,000 in cities of over 50,000, from \$5,100 to \$5,400 in cities of 25,000 to 50,000, from \$4,500 to \$5,100 in other first class cities, from \$3,000 to \$3,600 in second class cities, and from \$1,800 to \$2,400 in third class cities.

11-731. (5025) Salary of city or town clerk. The annual salary and compensation of the city or town clerk must be fixed by ordinance, and in cities with a population of more than fifty thousand (50,000) persons, according to the last federal census, shall be not more than seven thousand two hundred dollars (\$7,200.00); in cities with a population of not less than twenty-five thousand (25,000) and not more than fifty thousand (50,000) persons, according to the last federal census, the annual salary and compensation must not exceed six thousand dollars (\$6,000.00); in cities of the first class with a population of less than twenty-five thousand (25,000) persons, according to said census, must not exceed five thousand four hundred dollars (\$5,400.00); in cities of the second class the annual salary and compensation must not exceed four thousand eight hundred dollars (\$4,800.00). In cities of the third class the compensation must not exceed three thousand dollars (\$3,000.00), and in towns must not exceed one thousand eight hundred dollars (\$1,800.00); provided, however, that nothing in this section shall be held or construed as applying to cities and towns operating under the commission form of government.

History: En. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917; re-en. Sec. 5025, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1945; amd. Sec. 3, Ch. 188, L. 1949; amd. Sec. 3, Ch. 115, L. 1951; amd. Sec. 5, Ch. 76, L. 1953; amd. Sec. 4, Ch. 170, L. 1955; amd. Sec. 5, Ch. 179, L. 1961; amd. Sec. 5, Ch. 158, L. 1965.

Amendments

The 1961 amendment inserted in the first sentence the two clauses pertaining to cities of over 50,000 and to cities of 25,000 to 50,000; inserted the words "with a population of less than twenty-five thousand (25,000) persons, according to said census" in the clause pertaining to other first class cities; and inserted the

words "the annual salary and compensation" in the clause pertaining to second class cities.

The 1965 amendment increased the maximum annual salary and compensation from \$6,400 to \$7,200 in cities of over 50,000, from \$4,200 to \$4,800 in second class cities, and from \$2,700 to \$3,000 in third class cities.

Repealing Clause

Section 6 of Ch. 179, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 7 of Ch. 179, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 6, 1961.

Section 6 of Ch. 158, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

CHAPTER 9—POWERS OF CITY AND TOWN COUNCILS

Section 11-918. Licensing, taxing and regulation.

11-966. Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances.

11-986. Acquisition of landing fields and parking areas—jurisdiction.

11-901. (5039) Powers of city councils.

Water Main Service Charge

Under its power to provide for the general welfare of its inhabitants, a city may provide for a flat rate charge to property owners for services of its employees in tapping into the water main. *Leischner v. Knight*, 135 M 109, 337 P 2d 359.

References

Cited or applied in *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1025; *City of Bozeman v. Ramsey*, 139 M 148, 362 P 2d 206, 211.

11-902. (5039.1) Levy and collection of taxes.

Cross-Reference

Temporary authority for emergency tax levy by city council, see 84-3805 note.

11-903. (5039.2) Licenses—requirements.

Ordinance Required

In the absence of a licensing ordinance the city is powerless to attempt to exact

license fees or to regulate the operation of any business. State ex rel. *Willumsen v. City of Butte*, 135 M 350, 340 P 2d 535.

11-904. (5039.3) Issuing licenses.

Ordinance Required

Where the city's licensing ordinance did not include the operation of a call office for dry cleaning, the city was without

jurisdiction to arrest the operator of such an establishment for conducting business without a license. State ex rel. *Willumsen v. City of Butte*, 135 M 350, 340 P 2d 535.

11-905. (5039.4) Building or hiring and lighting and heating, etc.

Cross-Reference

Building specifications for accommoda-

tion of handicapped persons, secs. 69-3701 to 69-3719.

11-917. (5039.14) Water regulation.

Cross-Reference

Flood control projects of cities and towns, secs. 89-3301 to 89-3313.

11-918. (5039.15) Licensing, taxing and regulation. The city or town council has power: To license, tax, and regulate auctioneers, peddlers, pawnbrokers, secondhand and junk shops: motor vehicles and

motor vehicle bodies, except those on commercial property, which are not otherwise taxed: drivers, porters, pool halls and soft drink parlors, billiard tables, tenpin alleys, shooting galleries, shows, circuses, street parades, theatrical performances, and places of amusements within the city or town; provided, that the power to license, tax, and regulate circuses and shows of like character shall extend three miles beyond the limits of the city or town.

History: En. subd. 16, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 192, L. 1965.

Amendment

The 1965 amendment inserted "motor vehicles and motor vehicle bodies, except those on commercial property, which are not otherwise taxed."

11-950. (5039.47) Penalties for violation of ordinances, etc.

Invalid Ordinance

A town ordinance which in effect adopted all state laws defining misdemeanors and made them town ordinances, with penalties limited as provided by this sec-

tion, was invalid as containing more than one subject in violation of the prohibition set forth in section 11-1102. *Town of White Sulphur Springs v. Voise*, 136 M 1, 343 P 2d 855, 865.

11-966. (5039.63) Purposes for which indebtedness may be incurred—limitation—additional indebtedness for sewer or water system—procuring water supply and system—jurisdiction of public works appurtenances. The city or town council has power: (1) To contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes, to-wit: Erection of public buildings, construction of sewers, sewage treatment and disposal plants, bridges, docks, wharves, breakwaters, piers, jetties, moles, waterworks, reservoirs and reservoir sites, lighting plants, supplying the city or town with water by contract, the purchase of fire apparatus, street and other equipment, the construction or purchase of canals or ditches and water rights for supplying the city or town with water, building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, to acquire, open and/or widen any street and to improve the same by constructing, reconstructing and repairing pavement, gutters, curbs and vehicle parking strips and to pay all or any portion of the cost thereof, and the funding of outstanding warrants and maturing bonds; provided, that the total amount of indebtedness authorized to be contracted in any form, including the then existing indebtedness, must not, at any time, exceed five per centum (5%) of the total value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes, said words "value of the taxable property" being used herein in the same sense as in section 6 of article XIII of the Constitution; provided, that no money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewerage system, until the proposition has been submitted to the vote of the taxpayers affected thereby of the city or town, and the majority vote cast in favor thereof; and, further provided, that an additional indebtedness shall be incurred, when necessary, to construct a sewerage system or procure a water supply for the

said city or town, which shall own or control said water supply and devote the revenue derived therefrom to the payment of the debt.

(2) to (4). * * * [Subdivisions (2) to (4), same as parent volume.]

History: En. Subd. 64, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963. See also history of Sec. 11-901.

Amendments

The 1959 amendment in subd. (1) added the phrase "sewage treatment and disposal plants" preceding the word "bridges" and the phrase "sewage and disposal plant" following the words "water supply."

The 1963 amendment inserted in subd. (1) the words "building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water."

11-981. (5039.78) Securing water supply.

References

Cited in *Leischner v. Knight*, 135 M 109, 337 P 2d 359, 361.

11-986. (5039.83) Acquisition of landing fields and parking areas—jurisdiction. The city or town council has power: To acquire by lease, gift, purchase or condemnation lots or lands for landing fields or parking areas for aircraft, within or without the corporate limits of the municipality, and to acquire by lease, gift, or purchase lots or lands for parking areas for automobiles within the corporate limits of the municipality, and to exercise municipal jurisdiction over the lots or lands where such lots or lands, or any portion thereof, are without the corporate limits of the municipality, to the same extent as though they were within such corporate limits.

History: En. Subd. 84, Sec. 5039, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; amd. Sec. 1, Ch. 147, L. 1947; amd. Sec. 1, Ch. 27, L. 1965. See also history of Sec. 11-901.

Amendment

The 1965 amendment deleted from the end of the section a proviso reading, "provided that no city or town shall erect

Repealing Clause

Section 2 of Ch. 38, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 158, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

Charge for Tapping Water Mains

Subdivision (4) of this section empowers the city to establish a flat rate schedule for tapping water mains located entirely within the public right of way, where the labor and materials are furnished by the city. *Leischner v. Knight*, 135 M 109, 337 P 2d 359.

structures on said lots or lands for the purpose of parking automobiles but shall be permitted to surface or semi-surface such lots or lands for parking purposes only."

Repealing Clause

Section 2 of Ch. 27, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 10—POWERS OF CITY AND TOWN COUNCILS (continued)

Section 11-1001. Authorization of cities and towns to furnish water to industries and to persons without city limits—rates—penalty for violations.

11-1024. Group insurance for county, city, and town officers and employees—authority—approval of employees—limit on contribution of governmental unit.

11-1001. (5040.1) Authorization of cities and towns to furnish water to industries and to persons without city limits—rates—penalty for violations. (1) The city or town council of any city or town within the state of Montana, that owns and operates a municipal water system, to furnish water to the inhabitants of such city or town, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system, to any person, factory, or other industry, located within the corporate limits of such city or town, or to any person, factory or other industry located outside the corporate limits of such city or town, at reasonable rates filed by the city or town council and approved by the public service commission [provided that delivery of water by any such city or town] to or for the use of any person, factory or other industry located outside the corporate limits of such city or town shall be made within, or at the boundary line of the corporate limits of such city or town, or from any existing water line of such city or town located outside of the corporate limits of such city or town, except as hereinafter provided.

(2) The city council of any city within the state of Montana that owns and operates a municipal water system to furnish water to the inhabitants of such city, as a public utility, shall, in addition to all other powers, have power to furnish water from such water system to the inhabitants or to any person, factory, industry or producer of farm or other products located outside of the corporate limits of such city, at reasonable rates filed by the city or town council and approved by the public service commission, and such city council is further empowered to make collections for furnishing water in the same manner as collections are made within the corporate limits.

(3). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 71, L. 1925; amd. Sec. 1, Ch. 134, L. 1929; amd. Sec. 1, Ch. 6, L. 1955; amd. Sec. 1, Ch. 63, L. 1957; amd. Sec. 1, Ch. 194, L. 1961.

Compiler's Note

The compiler has inserted the bracketed words in subd. (1).

Amendment

The 1961 amendment substituted the words "at reasonable rates filed by the city or town council and approved by the public service commission" for the words "at rates established for like use or service to the inhabitants or industries located inside the corporate limits of such city or town" in subd. (1) and for the words "at such rates as to the said city council may

seem just and equitable" in subd. (2); deleted from subd. (1) the words shown in brackets above; and inserted near the end of subd. (1) the words "or from any existing water line of such city or town located outside of the corporate limits of such city or town."

Repealing Clause

Section 2 of Ch. 194, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 194, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 7, 1961.

11-1014. (5054) Ayes and noes must be called, etc.

References

Cited or applied in *Dimich v. Northern Pacific Ry. Co.*, 136 M 485, 348 P 2d 786, 793.

11-1024. Group insurance for county, city, and town officers and employees—authority—approval of employees—limit on contribution of gov-

ernmental unit. All counties, cities, and towns are hereby authorized upon approval by a two-thirds (2/3) vote of the officers and employees to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees, and their dependents, and the respective governing bodies are authorized to pay as part of the officers and employees salary one-half of the total premium therefor; provided, however, that such payment shall not exceed seven dollars and fifty cents (\$7.50) per month for each officer and employee.

History: En. Sec. 1, Ch. 174, L. 1957; - Amendment
amd. Sec. 1, Ch. 83, L. 1965.

The 1965 amendment increased the maximum monthly payment prescribed in the proviso at the end of the section from \$5.00 to \$7.50.

CHAPTER 11—ORDINANCES—INITIATIVE AND REFERENDUM

11-1102. (5056) Ordinances—how prepared.

One Subject

A town ordinance which, in effect, adopted all state laws defining misdemeanors and made them town ordinances, was invalid as violating the prohibition against passage of an ordinance containing more than one subject. Town of White

Sulphur Springs v. Voise, 136 M 1, 343 P 2d 855, 865.

References

Cited or applied in Dimich v. Northern Pacific Ry. Co., 136 M 485, 348 P 2d 786, 793.

11-1106. (5060) No ordinance to be effective until thirty days, etc.

References

Cited or applied in Dimich v. Northern Pacific Ry. Co., 136 M 485, 348 P 2d 786,

793; State ex rel. Konen v. City of Butte, — M —, 394 P 2d 753, 757.

CHAPTER 12—CONTRACTS AND FRANCHISES

Section 11-1202. Awarding contracts—advertisement—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.

11-1202. (5070) Awarding contracts—advertisement—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions. All contracts for work, or for supplies, or for material, or for the construction of any building, for which must be paid a sum exceeding one thousand dollars (\$1,000.00), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of three (3) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before the con-

sideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths ($\frac{3}{4}$) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

When the amount to be paid under any such contract shall exceed one thousand dollars (\$1,000.00) the council may provide for the payment of such amount in installments extending over a period of not more than three (3) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third ($\frac{1}{3}$) thereof shall be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

All necessary contracts for professional, technical, engineering and legal services are excluded from the provisions of this act.

History: En. Sec. 1, Ch. 48, L. 1907; re-en. Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963.

Amendments

The 1959 amendment, in the first paragraph, substituted the phrase "once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days" for the phrase "twice, the first publication to be made not more than

twenty-two (22) days nor less than fifteen (15) days before the consideration of bids and the second publication shall be made not less than five (5) days nor more than ten (10) days."

The 1963 amendment inserted "or for the construction of any building" near the beginning of the first paragraph.

Repealing Clause

Section 2 of Ch. 220, Laws 1959 repealed all acts and parts of acts in conflict therewith.

References

Cited in *State ex rel. Simmons v. City of Missoula*, — M —, 395 P 2d 249, 250.

CHAPTER 13—PRESENTATION AND PAYMENT OF CLAIMS— CITY WARRANTS

Section 11-1310. Investment of city or town moneys in city or town warrants and approved securities.

11-1302. (5079) Allowance and payment of claims—cash basis.

Lease Payments

Under resolution providing that city would convey title to properties to party who would cause to be built on one property a city approved building which the city would rent for an annual rental for a period of three years with option in

the city to purchase property together with the building thereon, lease payments were forms of indebtedness within section 6, article XIII of the constitution limiting indebtedness that may be incurred by city. *State ex rel. Simmons v. City of Missoula*, — M —, 395 P 2d 249, 251.

11-1305. (5080) Defective highways and public works—notice, etc.

Notice to City of Defective Condition

In an action by a pedestrian against a municipality for injuries sustained in a fall on a sidewalk, a telephone conversation by the owner of a business adjacent to the site of the fall, to the city engineer's office to the effect that he reported a defect in the walk to the person who answered the phone, was admissible and the absence of proof that the city clerk made a record of the report did not deny the right of the pedestrian, having carried the burden of proof, to recover damages. *Ratliff v. City of Great Falls*, 132 M 89, 314 P 2d 880.

Notice to the city may be proved "by any method through competent evidence." *Ratliff v. City of Great Falls*, 132 M 89, 314 P 2d 880, 883.

In an action for personal injuries resulting from fall on defective sidewalk, notice to a former street employee of the city, who had no authority to cause repairs to be made and was not chargeable with responsibility for ascertaining and reporting to those having authority

to repair, was not notice to the city. *Morris v. City of Deer Lodge*, 140 M 157, 369 P 2d 30, 32.

Operation and Effect

A cause of action for damage to property allegedly caused by the insufficiency of a storm sewer to handle water from a heavy rain was barred by the failure to give notice to the city within 60 days. *Thompson v. City of Shelby*, 136 M 562, 323 P 2d 33.

Purpose

The purpose of this section is to give knowledge of the injury to the city authorities so that the expense of litigation may be avoided, not alone that the city may have an opportunity to investigate, and it is not sufficient that city officers had notice of the defect. *Thompson v. City of Shelby*, 136 M 562, 323 P 2d 33, 34.

References

Cited in *Big Head v. United States*, 166 F Supp 510, 515.

11-1310. Investment of city or town moneys in city or town warrants and approved securities. (1) Except as provided in subsection (2) of this section, whenever the city or town has under its control any moneys, for which there is no immediate demand, in any fund which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council is authorized in their discretion to direct the city or town treasurer to purchase legally issued city or town general obligation warrants of the same city or town, thereafter issued against funds in which there is not sufficient money to pay

such city or town warrants at the time of issuance, and in case of such purchase, the city or town council shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the city or town warrant or warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant. The city or town treasurer shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council, and the warrant so purchased shall be registered as other city or town warrants, and bear interest as provided by law. When the designated amounts have been invested the city or town treasurer shall notify the city or town clerk.

(2) Whenever the city or town has under its control any moneys realized from the sale of bonds, for which there is no immediate demand, which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less, the city or town council is authorized in their discretion to direct the city or town treasurer to make such investments. Interest earned from such investments shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961;
amd. Sec. 1, Ch. 10, L. 1963.

Amendment

The 1963 amendment designated the original section as subsection (1); inserted the words "Except as provided in subsection (2) of this section" at the beginning of such subsection (1); and added subsection (2).

Title of Act

An act to provide that a city or town may invest moneys from funds for which there is no immediate demand, in the purchase of outstanding city or town warrants, providing the warrants that may be so purchased, and the manner in which such warrants shall be purchased, and repealing all acts or parts of acts in conflict herewith.

Repealing Clauses

Section 2 of Ch. 31, Laws 1961 and Sec. 2 of Ch. 10, Laws 1963 repealed all acts and parts of acts in conflict therewith.

CHAPTER 14—BUDGET SYSTEM FOR CITIES AND TOWNS

11-1409. (5083.8) Emergency expenditures—Notice and hearing, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

CHAPTER 18—POLICE DEPARTMENT, METROPOLITAN POLICE LAW

- Section 11-1804.1.** Third class cities—appointment of commission upon request of policemen—procedure for discharge of policemen.
- 11-1806. Presentation and trial of charges against policemen.
 - 11-1814. Qualifications of policemen.
 - 11-1823. Fund for payment of officers on reserve lists—tax levy.
 - 11-1834. Annual state payments to municipality with police department.

- 11-1835. State payments to come from motor vehicle insurance premium tax.
 11-1836. Credit of payments to reserve fund of police retirement system—annual report of board.
 11-1837. Expenditure of funds by municipality not having police retirement system—annual report of treasurer.

11-1801. (5095) Police department.**Appointment of Policemen in Third Class City**

Where a city had not elected to come under the provisions of the metropolitan police law, it was not bound by any of the provisions thereof and was not prohibited from appointing a policeman who had not been a resident for six months. *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023.

Liability of City for Tortious Act of City Policeman

A city is not liable for tortious acts of a city policeman committed while acting within the course and scope of his employment in enforcing the laws and ordi-

nances of a city. *Kingfisher v. City of Forsyth*, 132 M 39, 314 P 2d 876, 878.

Operation and Effect

A municipality has the duty to maintain an adequate police force and, it follows, the duty to preserve order, and in performing that duty the municipality is performing a governmental function. *Kingfisher v. City of Forsyth*, 132 M 39, 314 P 2d 876, 879.

As to cities of the first and second classes, the metropolitan police law is mandatory, but, as to other cities and towns, it is permissive only. *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1024.

11-1804. (5098) Police commission required in first and second, etc.**References**

Cited or applied in *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1024.

11-1804.1. Third class cities—appointment of commission upon request of policemen—procedure for discharge of policemen. It is hereby made the duty of the mayor of any city of the third class which does not have a police commission, upon the written request of any policeman who has been employed by said city as such for a period of ten years or more, to appoint a police commission in accordance with the provisions of section 11-1804, Revised Codes of Montana, 1947, which commission shall then proceed under the provisions of section 11-1806, Revised Codes of Montana, 1947, before such policeman can be discharged or terminated from his employment as a policeman.

History: En. Sec. 1, Ch. 199, L. 1959.

Title of Act

An act to make it the duty of the mayor of any city of the third class which does not have the police commission, upon the written request of a policeman employed by the city as such for ten years or more to appoint a police commission in accordance with section 11-1804, Revised Codes of Montana, 1947; providing for procedure as set forth in section 11-1806, Revised Codes of Montana, 1947; providing for

an effective date; and repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 199, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 199, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 10, 1959.

11-1806. (5100) Presentation and trial of charges against policemen.

(1) to (9). * * * [Subdivisions (1) to (9), same as parent volume.]

(10) The mayor or chief of police, subject to the approval of the mayor, shall have the power in all cases, to suspend a policeman, or any

officer, for a period of not exceeding ten (10) days in any one (1) month, such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission and it shall be the duty of the commission to hear, try and decide all charges brought by any person or persons against any member or officer of the department. The mayor of any city shall have the power and authority at any time when he deems it expedient to employ not to exceed two (2) persons at one time for a period not to exceed thirty (30) days to do police duty who are not members of the police department.

(11). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 136, L. 1907; re-en. Sec. 3309, Rev. C. 1907; re-en. R. C. M. 1921; amd. Sec. 4, Ch. 119, L. 1923; amd. Sec. 1, Ch. 72, L. 1955; amd. Sec. 1, Ch. 28, L. 1959.

Amendment

The 1959 amendment in subd. (10) substituted the words "such suspension to be with or without pay as the order of suspension may determine. Any officer suspended, with or without pay, is entitled to appeal such suspension to the police commission and it shall be the duty of

the commission to hear, try and decide all charges brought by any person or persons against any member or officer of the department" following the words "in any one (1) month," for the words "without any hearing or trial, such suspension to be with or without pay as the order of suspension may determine."

Repealing Clause

Section 2 of Ch. 28, Laws 1959, repealed all acts and parts of acts in conflict therewith.

11-1814. (5106) Qualifications of policemen. The members of a police department of any city, at the time of their appointment under this act, shall not be less than twenty-one years of age nor more than forty years of age, provided, however, that any city council shall have the power by ordinances duly passed and approved to retire any police officer on half pay, who shall have arrived at the age of sixty-five years, or who shall have served continuously as a police officer for a period of not less than twenty-five years, or who shall have become incapacitated to perform the duties of his office by reason of injury or accident sustained while actually engaged in the performance of his duties as an officer.

In every case a police officer must be a citizen of the United States, must have resided in the state of Montana at least two years, and have been a resident of the city or town in which he is appointed at least six (6) months prior to such appointment, such qualifications also to apply to every officer on the eligible list, at the time he shall be transferred to the active list.

Every police officer must be able to speak and write understandingly the English language.

History: En. Sec. 12, Ch. 136, L. 1907; re-en. Sec. 3315, Rev. C. 1907; re-en. Sec. 5106, R. C. M. 1921; amd. Sec. 6, Ch. 119, L. 1923; amd. Sec. 1, Ch. 29, L. 1959.

Amendment

The 1959 amendment in the first paragraph deleted the words "but this restriction shall not apply to any member of any present police department," which ap-

peared after the words "forty years of age," and in the second paragraph substituted the words "must have resided in the state of Montana at least two years, and have been a resident of the city or town in which he is appointed at least six (6) months" for the words "and have been a resident of the city or town in which he is appointed at least two years."

Repealing Clause

Section 2 of Ch. 29, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Appointment of Policemen in Third Class City

Where a city had not elected to come

under the provisions of the metropolitan police law, it was not bound by any of the provisions thereof and was not prohibited from appointing a policeman who had not been a resident for six months. *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023.

11-1823. (5108.7) Fund for payment of officers on reserve lists—tax levy. For the purpose of paying the salaries of policemen who have been placed upon the reserve list of the cities of the first and second class, the city or town council, or commissioners, shall in the manner provided for by law, and at the time of the levy of the annual tax, levy such special tax of not to exceed one (1) mill on the dollar upon the assessed valuation of all taxable property within the limits of said city or town, which said tax shall be collected as other taxes and when so collected, shall be paid into the fund created for the payment of such salaries of police officers upon the reserve list.

However, in case the demand against such fund shall be heavier than said levy can provide, then and in such case such additional levy of not to exceed two (2) mills may be made until such returns from the first mill levy be sufficient to meet the demand.

History: En. Sec. 7, Ch. 100, L. 1927; amd. Sec. 7, Ch. 120, L. 1929; amd. Sec. 2, Ch. 78, L. 1937; amd. Sec. 1, Ch. 78, L. 1949; amd. Sec. 1, Ch. 8, L. 1959.

Repealing Clause

Section 2 of Ch. 8, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1959 Amendment, in the second paragraph raised the additional levy authorized from one mill to two mills.

11-1824. (5108.8) Cities under second class may come within, etc.

References

Cited or applied in *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1024.

11-1832. (5108.16) Minimum wage of police in first and second class cities.

Annual Increase

Although the wages provided for by the 1957 amendment are payable only after July 1, 1957, this does not mean that the legislature did not intend to consider service prior to that date in computing what the wages shall be. *Hill v. Billings*, 134 M 282, 328 P 2d 1112, 1115.

In enacting Laws of 1957, chapter 28, amending this section, the legislature intended to recognize the status of police officers according to the length of service in the past and to reward the more experienced by paying them a higher wage scale. The legislature drew no distinction between years of service performed before July 1, 1957, and those performed after that date. *Hill v. Billings*, 134 M 282, 328 P 2d 1112, 1116.

Under this section as amended by Laws of 1957, chapter 28, added wages must be added to the actual current salary and not to the minimum of \$350 a month. *Hill v. Billings*, 134 M 282, 328 P 2d 1112, 1115, explained in 139 M 343, 345, 363 P 2d 720.

Where a policeman's salary for one fiscal year was a stated amount which was calculated to include the longevity to which he was entitled, his "actual current salary" was the amount received other than for longevity, and the amount to which he is entitled for the next year is computed by adding his total longevity to the "actual current salary" rather than to the stated amount. *State ex rel. Raw v. City of Helena*, 139 M 343, 363 P 2d 720, 722.

11-1833. (5108.17) Application of act.**References**

Cited or applied in *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023, 1025.

11-1834. Annual state payments to municipality with police department. At the end of each fiscal year the state auditor shall issue and deliver to the treasurer of each city and town in Montana, having a police department, his warrant in an amount equal to the sum paid to that city or town for the use and benefit of its fire department relief association pursuant to the provisions of section 11-1919, R. C. M. 1947, as amended.

History: En. Sec. 1, Ch. 261, L. 1965.

Title of Act

An act to provide for annual payments from the premium tax collected on motor

vehicle insurance to every city or town having a police department; providing how such payments shall be expended by the cities or towns.

11-1835. State payments to come from motor vehicle insurance premium tax. The payment provided for by section 1 [11-1834] of this act shall be paid from the premium tax collected on motor vehicle insurance sold in this state to insure against the following risks: motor vehicle physical damage; property damage; bodily injury. Such payments will only be made after deductions have been made from the gross premium tax for cancellations and returned premiums.

History: En. Sec. 2, Ch. 261, L. 1965.

11-1836. Credit of payments to reserve fund of police retirement system—annual report of board. Every city or town, having a police retirement system established under the provisions of the metropolitan police law, shall deposit said payment to the credit of the police reserve fund of such city or town. The board of trustees of each police officer's reserve fund shall on or before the first day of April of each year report to the state auditor as to the financial condition of their fund.

History: En. Sec. 3, Ch. 261, L. 1965.

11-1837. Expenditure of funds by municipality not having police retirement system—annual report of treasurer. Any city or town not governed by the provisions of the police retirement system law, shall only expend said payment for police training or to purchase pensions for members of their police department. The city or town treasurer of such cities or towns shall on or before the first day of April of each year report to the state auditor as to the expenditures of all funds received pursuant to this act.

History: En. Sec. 4, Ch. 261, L. 1965.

Effective Date

Section 5 of Ch. 261, Laws 1965 read "This act is effective on June 30, 1967."

CHAPTER 19—FIRE DEPARTMENT—FIREMEN'S DISABILITY AND PENSION FUND

- Section 11-1901. Department to be established—application of chapter—mutual aid agreements.
- 11-1912. Tax levy for fund.
 - 11-1914. Duties of trustees—investment of surplus funds.
 - 11-1918. Reports of insurers.
 - 11-1919. State auditor to pay fire department relief association premium tax collected from certain insurers.
 - 11-1920. Estimate of payments.
 - 11-1921. State treasurer to pay warrants.
 - 11-1925. Pensions to retired firemen.
 - 11-1926. Disability pension.
 - 11-1927. Pensions to widows and orphans.

11-1901. (5109) Department to be established—application of chapter—mutual aid agreements. (a) There shall be in every city and town of this state a fire department, which shall be organized, managed and controlled as in this chapter provided, which shall in all respects be applicable to and shall govern and control fire departments in every such city or town organized under whatever form of municipal government save and except where this act is in conflict with the commission form of government, provided for in sections 11-3101 to 11-3137, and amendments thereto; and where the provisions of this act do conflict with the provisions of said chapter and the amendments thereto pertaining to the commission form of government, then the provisions pertaining to the commission form of government shall prevail.

(b) A mutual aid agreement is an agreement for protection against natural or man-made disasters. Councils or commissions of incorporated municipalities may enter such agreements with the proper authority of:

- (1) other incorporated municipalities
- (2) fire districts
- (3) unincorporated municipalities
- (4) state agencies which have fire protection services
- (5) private fire prevention agencies
- (6) federal agencies.

History: En. Sec. 1, p. 73, L. 1899; re-en. Sec. 3326, Rev. C. 1907; re-en. Sec. 5109, R. C. M. 1921; amd. Sec. 1, Ch. 4, L. 1937; amd. Sec. 1, Ch. 97, L. 1947; amd. Sec. 1, Ch. 151, L. 1947; amd. Sec. 1, Ch. 73, L. 1949; amd. Sec. 3, Ch. 2, L. 1965.

Amendment

The 1965 amendment designated the former provisions as subd. (a) and added subd. (b).

11-1902. (5110) Fire department to consist of what, etc.

Conduct Unbecoming a Fire Chief

Charges of personal conduct unbecoming a fire chief were not so broad as to preclude the preparation of an effective defense where chief actively participated, took over the examination, was fully aware of the proceedings, and was in no way prejudiced. The removed officer was given an opportunity for explanation and in attempting to explain, spelled out the behavior, or lack of good behavior set forth in this section. State ex rel. Burns

v. City of Livingston, — M —, 395 P 2d 971, 980. (Dissenting opinion, — M —, 395 P 2d 971, 980.)

Evidence that fire chief did not have a driver's license for almost a year; that he was the licensee of a bar; and that he had been convicted twice of selling liquor to minors warranted his discharge for personal conduct unbecoming a fire chief. State ex rel. Burns v. City of Livingston, — M —, 395 P 2d 971, 979. (Dissenting opinion, — M —, 395 P 2d 971, 980.)

11-1903. (5111) Powers of mayor or manager to suspend firemen.**Conduct Unbecoming a Fire Chief**

Evidence that fire chief did not have a driver's license for almost a year; that he was the licensee of a bar; and that he had been convicted twice of selling liquor to minors warranted his discharge for personal conduct unbecoming a fire chief. *State ex rel. Burns v. City of Livingston*, — M —, 395 P 2d 971, 979. (Dissenting opinion, — M —, 395 P 2d 971, 980.)

Discharge without Suspension

Where fire chief was on sick leave, it was not necessary for the mayor to suspend him as a condition precedent to filing formal charges against him or holding a hearing thereon. *State ex rel. Burns v. City of Livingston*, — M —, 395 P 2d 971, 974. (Dissenting opinion, — M —, 395 P 2d 971, 980.)

Hearing of Charges

Charges of personal conduct unbecom-

ing a fire chief were not so broad as to preclude the preparation of an effective defense where chief actively participated, took over the examination, was fully aware of the proceedings, and was in no way prejudiced. The removed officer was given an opportunity for explanation and in attempting to explain, spelled out the behavior, or lack of good behavior set forth in section 11-1902. *State ex rel. Burns v. City of Livingston*, — M —, 395 P 2d 971, 980. (Dissenting opinion, — M —, 395 P 2d 971, 980.)

The three charging members of fire and police committee were not disqualified from sitting with city council to hear charges against fire chief since the council under this section had exclusive jurisdiction to hear the charges. *State ex rel. Burns v. City of Livingston*, — M —, 395 P 2d 971, 979. (Dissenting opinion, — M —, 395 P 2d 971, 980.)

11-1912. (5119) Tax levy for fund. For the purpose of maintaining said disability and pension funds of such fire department relief association, in an amount equal to one per centum (1%) of the taxable valuation of all taxable property within the limits of any city, town or municipality, the city or town council or the commission or such other proper authority of any municipality, as is now or may hereafter be established, under special or local laws passed by the legislative assembly and adopted by the electors within such city, town or municipality, entitled to vote thereon, at all times when the said relief association fund is in a total amount of less than one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, shall, annually, in the manner provided by law, at the time of the levy of the annual tax, levy a special tax as herein below set forth, which said special tax shall be collected as other taxes are collected and when so collected shall be paid into the disability and pension fund of the fire department relief association of said city, town or municipality:

1. Whenever the total amount of a fire department relief association's fund is less than one per centum (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality, the special tax levy shall be two (2) mills on each dollar of taxable valuation of all property assessed for taxes within the limits of the said city, town or municipality; provided, however, if the assessment of a two (2) mill tax levy in one year will create a revenue as will cause said fire department relief association's disability and pension fund to exceed one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality, then, in that event, and not otherwise, the mill tax levy shall be such fractional part of two (2) mills as will produce a sufficient amount of revenue as will bring the total amount of the said fire department relief association's disability and pension fund to an amount equal to one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality.

2. Whenever the total amount of a fire department relief association's fund is less than one-half of one per centum ($\frac{1}{2}$ of 1%) of the taxable valuation of all taxable property within the said city, town or municipality, the special tax levy shall be three (3) mills on each dollar of taxable valuation of all taxable property assessed for taxes within said city, town or municipality; provided, however, that if the assessment of a three (3) mill tax levy in any one year will create a revenue as will cause said fire department relief association's disability and pension fund to exceed one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality, then, in that event, and not otherwise, the tax levy shall be two (2) mills, as provided in the last preceding paragraph, and such fractional part of one (1) mill as will produce a sufficient revenue as will cause the fire department relief association's disability and pension fund to equal one per centum (1%) of the taxable valuation of all taxable property in said city, town or municipality.

3. In cities of the third class, when the fire department relief association's disability and pension fund contains an amount of less than two per centum (2%) of all taxable property within the city limits of the city, town or municipality, the city council may levy an annual special tax not to exceed two (2) mills on the dollar of all taxable valuation of all taxable property assessed within the said city, town or municipality.

History: En. Sec. 3, Ch. 71, L. 1907; re-en. Sec. 3336, Rev. C. 1907; re-en. Sec. 5119, R. C. M. 1921; amd. Sec. 3, Ch. 58, L. 1927; amd. Sec. 1, Ch. 43, L. 1931; amd. Sec. 2, Ch. 43, L. 1939; amd. Sec. 1, Ch. 159, L. 1945; amd. Sec. 1, Ch. 183, L. 1949; amd. Sec. 1, Ch. 107, L. 1959; amd. Sec. 1, Ch. 24, L. 1965.

Amendments

The 1959 amendment in subd. 1 deleted the words "greater than one-half of one per centum ($\frac{1}{2}$ of 1%) and" which appeared after the words "association's fund

is"; substituted "two (2) mills" for "one (1) mill" each time it appears; deleted former subd. 2, for text of which see parent volume, and renumbered old subd. 3 as subd. 2.

The 1965 amendment inserted a new paragraph 2; renumbered former paragraph 2 as 3; and made a minor change in phraseology in paragraph 1.

Repealing Clause

Section 2 of Ch. 107, Laws 1959 repealed all acts or parts of acts in conflict therewith.

11-1914. Duties of trustees—investment of surplus funds. The board of trustees of said fire department relief association shall audit the account of the association at least every six (6) months and shall report the condition thereof at the next regular meeting of said association. The general management of the association shall be vested in the board of trustees. When so directed by a majority vote of the members of the association, the board of trustees shall have the power to invest the surplus funds of the association or any part thereof, in any time or saving deposits, in bonds or other securities of the United States government, in general obligation bonds or warrants of any state, county or city as are recommended by the state auditor and approved by the state examiner. At the time of purchase such investments must be stamped in boldface type, substantially as follows: "Property of the _____ Fire Department Relief Association, and negotiable only upon the order of the board of trustees of such association."

History: En. Sec. 5, Ch. 71, L. 1907; re-en. Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R. C. M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; amd. Sec. 1, Ch. 9, L. 1963.

Amendment

The 1963 amendment inserted "in any time or saving deposits" in the third sentence.

11-1918. (5126) Reports of insurers. The commissioner of insurance shall furnish to each insurer authorized to effect insurance against risks enumerated in subsection 2 of section 11-1919 for its annual statement, a list of all such incorporated cities or towns, and each insurer shall report therein the amount of the fire portion of the direct premiums, after deducting cancellations and return premiums, received by it during the preceding year in each incorporated city or town. Before July 1 following the said October 31, mentioned in preceding sections, the commissioner of insurance shall certify to the state auditor the name of each city or town which has an organized fire department and fire department relief association which has complied with provisions of section 11-1910, which has been so reported to him and the amount of the fire portion of the direct premiums after deducting cancellations and return premiums, received in each such city or town in such year by each insurer authorized to effect insurance on risks enumerated in subsection 2 of section 11-1919.

History: En. Sec. 2, Ch. 129, L. 1911; re-en. Sec. 5126, R. C. M. 1921; amd. Sec. 8, Ch. 58, L. 1927; amd. Sec. 1, Ch. 126, L. 1947; amd. Sec. 1, Ch. 22, L. 1955; amd. Sec. 1, Ch. 184, L. 1959.

1 of section 40-1409" each time it appeared.

Repealing Clause

Section 2 of Ch. 184, Laws 1959, repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 184, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

Amendment

The 1959 amendment substituted the word "insurer" for the words "insurance company" each time they appear and substituted the reference "subsection 2 of section 11-1919" for the reference "paragraph

11-1919. (5127) State auditor to pay fire department relief association premium tax collected from certain insurers. 1. At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, his warrant for an amount equal to the taxes upon the fire portion of the direct premiums after deducting cancellations and return premiums, collected by the state auditor, ex officio insurance commissioner, from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, as said cities or towns are each severally entitled to, computed as follows:

(a) Each and every fire department relief association legally organized and existing in any city or town and entitled by law to receive the same shall receive, as its portion of the total taxes on premiums collected from insurers authorized to effect insurance on risks enumerated in subsection 2 of this section, the fire portion of the direct premiums, after deducting cancellations and return premiums, assessed and collected by insurers authorized to effect insurance on risks enumerated in subsection 2 of this section in the said city or town.

(b) The legally organized and existing fire department relief associations in all cities or towns where the taxes on premiums collected and distributed pursuant to subdivision (a) above is insufficient to make an amount equal to one hundred dollars (\$100.00) shall receive such additional amount from the total taxes on premiums collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of this section as may be necessary to make the total amount received by said fire department relief association equal to the sum of one hundred dollars (\$100.00).

2. The risks referred to in subsection 1 above, are enumerated as follows: Insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty, and all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water or air; insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils; insurance of growing crops against loss or damage resulting from hail or the elements; insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus; and insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles whether by accident or collision or by explosion of any engine or tank or boiler or pipe or tire of any vehicle, and also including insurance against theft of the whole or any part of any vehicle.

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915, re-en. Sec. 5127, R. C. M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963.

Amendments

The 1959 amendment made numerous changes in this section and added subsection 2. For section prior to amendment see parent volume.

The 1963 amendment substituted "the fire portion of the direct premiums after deducting cancellations and return pre-

miums" for "premiums" in the preliminary paragraph of subsection 1, and for "all of the taxes on premiums" in subd. 1 (a); and deleted the words "on all premiums collected" which followed "assessed and collected" in the latter part of subd. 1 (a).

Repealing Clause

Section 2 of Ch. 183, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 183, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

11-1920. (5127.1) Estimate of payments. The state auditor shall estimate the portion of premium taxes needed to make the payments required by this act and shall pay an amount equal to the estimate into the state treasury, to the credit of the earmarked revenue fund. Any balances remaining after such payments have been ordered shall be transferred to the general fund.

History: En. Sec. 2, Ch. 15, L. 1935; amd. Sec. 69, Ch. 147, L. 1963.

Amendment

The 1963 amendment completely rewrote this section. For previous text, see parent volume.

11-1921. (5128) State treasurer to pay warrants. The state treasurer is hereby authorized and directed, upon the presentation to him of a

warrant drawn pursuant to this act, to pay to the treasurer of any such city or town, out of moneys in the earmarked revenue fund dedicated for such purpose, the amount of such warrant specified, which amount shall be paid by said city treasurer to said fire department relief association.

History: En. Sec. 4, Ch. 129, L. 1911; re-en. Sec. 5128, R. C. M. 1921; amd. Sec. 10, Ch. 58, L. 1927; amd. Sec. 70, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "a warrant drawn pursuant to this act" for

"said warrant of the state auditor" and "moneys in the earmarked revenue fund dedicated for such purpose" for "the fund known as the disability and pension fund of the fire department relief association as by law designated."

11-1925. (5132) Pensions to retired firemen. Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund," a "service pension" in an amount which shall be equal to one-half ($\frac{1}{2}$) of the sum last received by the member as a monthly compensation for his services as an active member of said fire department. Provided, such association may at any time, by a two-thirds ($\frac{2}{3}$) vote of the members thereof, increase or decrease the said service pension whenever the financial condition of the association's "disability and pension fund" shall warrant such action; provided, that no increase shall be effected as will increase the said "service pension" to an amount in excess of a sum equal to one-half ($\frac{1}{2}$) of the monthly active duty compensation last received by the member; provided, further, that no decrease shall be effected unless the balance in the "disability and pension fund" is less than one-half ($\frac{1}{2}$) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town or municipality. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars (\$75.00) per month.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such a fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act.

History: En. Sec. 8, Ch. 129, L. 1911; amd. Sec. 1, Ch. 66, L. 1919; re-en. Sec. 5132, R. C. M. 1921; amd. Sec. 14, Ch. 58, L. 1927; amd. Sec. 1, Ch. 73, L. 1939; amd. Sec. 1, Ch. 98, L. 1945; amd. Sec. 1, Ch. 194, L. 1949; amd. Sec. 1, Ch. 56, L. 1963.

Amendment

The 1963 amendment inserted the next to last sentence in the first paragraph.

11-1926. (5133) Disability pension. Each and every fire department relief association, organized and existing under the laws of this state, shall pay a "disability pension," out of any moneys in the association's "disability and pension fund," to each and every member of said association who has become injured or disabled by reason of sickness or injury contracted or received in line of duty, in an amount which shall be equal to one-half ($\frac{1}{2}$) of the sum last received as a monthly compensation by such injured or disabled member for services rendered the fire department of the city or town wherein such association has been formed. Provided, such association may at any time, by two-thirds ($\frac{2}{3}$) vote of the members thereof, increase or decrease the said "disability pension" whenever the financial condition of the association's "disability and pension fund" shall warrant such action; provided further, that no increase shall be effected as will increase the said "disability pension" to an amount in excess of a sum equal to one-half ($\frac{1}{2}$) of the monthly salary last received by the member; provided, further, that no decrease shall be effected unless the balance in the "disability and pension fund" is less than one-half ($\frac{1}{2}$) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town, or municipality. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. In case of volunteer firemen such disability pension shall in no event exceed the sum of seventy-five (\$75.00) dollars per month.

History: En. Sec. 9, Ch. 129, L. 1911; amd. Sec. 2, Ch. 66, L. 1919; re-en. Sec. 5133, R. C. M. 1921; amd. Sec. 15, Ch. 58, L. 1927; amd. Sec. 2, Ch. 73, L. 1939; amd. Sec. 2, Ch. 98, L. 1945; amd. Sec. 2, Ch. 56, L. 1963.

Amendment

The 1963 amendment deleted from the second sentence a proviso reading, "pro-

vided further that no member of said association shall be entitled to receive said 'disability pension' so long as he may be receiving an allowance or award under the Montana workmen's compensation act"; inserted the next to last sentence; and made a minor change in phraseology.

DECISIONS UNDER FORMER LAW

Workmen's Compensation Proviso Unconstitutional

The provisions of this section clearly impair an obligation of contract and must be declared unconstitutional insofar as they prohibit a fireman or his widow or orphan from receiving payments from the

disability and pension fund if they are also receiving payments under the Workmen's Compensation Act (section 92-101 et seq.). State ex rel. Evans v. Fire Department Relief Assn., 138 M 172, 355 P 2d 670, 672.

11-1927. (5134) Pensions to widows and orphans. Each and every fire department relief association, organized and existing under the laws of this state, shall pay to the widow or orphans of a deceased member of said association, who, on the date of his decease, was an active member

of the fire department in the city or town wherein such association has been formed, or had elected to retire from active service of said fire department and receive a "service pension" as provided for by section 11-1925, or prior to his decease had suffered a sickness or injury in line of duty, and was receiving or was qualified to receive a "disability pension," as provided by section 11-1926, out of any money in the relief association's "disability and pension fund," a monthly pension in an amount which shall be equal to one-half ($\frac{1}{2}$) of the monthly compensation last received by such deceased member for his services as an active member of the fire department in the city or town wherein such association has been formed. Provided, such association may at any time, by a two-thirds ($\frac{2}{3}$) vote of the members thereof, increase or decrease the said pension whenever the financial condition of the association's "disability and pension fund" shall warrant such action; provided, that no increase shall be effected as will increase the said pension in an amount in excess of a sum equal to one-half ($\frac{1}{2}$) of the monthly compensation last received by the deceased member; provided, further, that no decrease shall be effected unless the balance in the "disability and pension fund" is less than one-half ($\frac{1}{2}$) of one per cent (1%) of the taxable valuation of all taxable property within the limits of the city, town, or municipality. However, effective July 1, 1963, and after completing twenty (20) years or more of active service and attaining the age of fifty (50) years, a member elects to serve an additional one (1) to ten (10) years, then the pension shall be increased at the rate of one per cent (1%) per year of such additional service, up to a maximum of sixty per cent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department. Provided, that said pension shall be paid to the within named widow only so long as she remains unmarried, and further provided, that a widow of a deceased fireman shall not be entitled to the pension, provided for by this act, in those cases where the marriage was consummated after the fireman had elected to retire from active service and received a "service pension" as provided for by section 11-1925; or in those cases where the marriage was consummated after the fireman had qualified and was receiving a "disability pension" as provided for by section 11-1926. Provided further, that the pension herein provided for shall not be paid to the orphans of deceased firemen after they have attained the age of eighteen (18) years. In case of volunteer firemen such pension shall in no event exceed the sum of seventy-five (\$75.00) dollars per month.

History: En. Sec. 10, Ch. 129, L. 1911; re-en. Sec. 5134, R. C. M. 1921; amd. Sec. 16, Ch. 58, L. 1927; amd. Sec. 3, Ch. 73, L. 1939; amd. Sec. 3, Ch. 98, L. 1945; amd. Sec. 3, Ch. 56, L. 1963.

Amendment

The 1963 amendment inserted the third sentence (establishing a pension increase for elective additional service), and made a minor change in phraseology.

Separability Clause

Section 4 of Ch. 56, Laws 1963 read "If any clause, sentence, section, paragraph, or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid, or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid and inoperative."

CHAPTER 20—FIRE PROTECTION IN UNINCORPORATED TOWNS—FIRE WARDENS, COMPANIES AND DISTRICTS

Section	11-2007.	Duties of chief.
	11-2008.	Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries.
	11-2010.	Trustees of fire districts—mutual aid agreements.
	11-2022.	Disability, death, insurance and pension benefits.
	11-2023.	Qualification for compensation.
	11-2024.	Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list.
	11-2025.	Payment of claim—beneficiaries of decedent.
	11-2026.	Administration of act.
	11-2028.	Earnings to be part of moneys.
	11-2029.	Reports of public employees' retirement system.
	11-2030.	Fire insurance premium tax to be paid into fund.

11-2007. (5147) **Duties of chief.** The chief of every fire department must inquire into the cause of every fire occurring in the town of which he is the chief, and keep a record thereof; he must aid in the enforcement of all fire ordinances duly enacted, examine buildings in process of erection, report violations of ordinances relating to prevention or extinguishment of fires, and, when directed by the proper authorities, institute prosecutions therefor, and perform such other duties as may be by proper authority imposed upon him. His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires with his badge of office conspicuously displayed, must prevent injury to, take charge of, and preserve all property rescued from fires, and return the same to the owner thereof on the payment of the expenses incurred in saving and keeping the same, the amount thereof, when not agreed to, to be fixed by any justice of the peace.

He must devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of his department not less than thirty (30) hours of instruction per year in matters pertaining to fire fighting, and he must supervise the operation of such plan or program. On or before the first day of September of each year, he must prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, stating whether or not his volunteer fire company qualified under the provisions of subparagraph two (2) A of section 11-2023 during the preceding fiscal year, and setting forth the full name and residence address of each member of his department who satisfactorily completed such thirty (30) hours of instruction during said preceding fiscal year, under the provisions of subparagraph two (2) C of section 11-2023. Such verified certificate must be maintained in a permanent file by said public employees' retirement system for the purpose of establishing eligibility for participation in the volunteer firemen's pension plan, and must be open for inspection as a public record.

History: En. Sec. 3236, Pol. C. 1895;	Amendment
re-en. Sec. 2080, Rev. C. 1907; re-en. Sec. 5147, R. C. M. 1921; amd. Sec. 6, Ch. 118, L. 1965.	The 1965 amendment added the second paragraph.

Effective Date

Section 7 of Ch. 118, Laws 1965 provided the act should be in effect from

and after its passage and approval. Approved March 1, 1965.

11-2008. (5148) Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries. (a) The board of county commissioners is authorized to establish fire districts in any unincorporated territory, town or village upon presentation of a petition in writing signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll; the board shall within ten (10) days after the receipt of such petition; give notice of the hearing thereof at least ten (10) days prior thereto by causing notices of the time and place of such hearing to be posted in at least three (3) of the most public places within the area proposed to be established as a fire district, and published at least once not less than ten (10) or more than twenty (20) days prior to the time of said hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the said petition at the time set therefor, or at any time within five (5) days thereafter to which the same shall have been postponed or continued with due notice, and may grant the same unless it shall be established thereat that the petition bears insufficient signatures as above required, or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within thirty (30) days after said hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city, town or private fire service the consideration provided for in any contract with the council of such city, town or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. That the relationship between fire district and the city, town or private fire service shall be that of an independent contractor.

(b) Any fire district organized under this act may be dissolved by the board of county commissioners upon presentation of a petition therefor signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within such fire district and who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll. The procedure and requirements outlined in subsection (a) above shall apply to such requests for dissolution of fire districts.

(c) Change of boundaries—division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of twenty per cent (20%), or more, of the privately owned lands of an area proposed to be

detracted from the original district, and who constitute twenty per cent (20%), or more, of the taxpayers who are freeholders within such proposed detracted area, whose names appear upon the last completed assessment roll, the county commissioners shall, within ten (10) days from the receipt of such petition give notice of the hearing of said petition by causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by them for the consideration of said petition, in at least three (3) of the most public places within the proposed detracted area, and also in at least three (3) of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area, and also the boundaries of the remaining area. The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear said petition; and said petition shall be granted, and the original district shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the entire original district, and who constitute a majority of the taxpayers who are freeholders of the entire original district, and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

(d) Change of boundaries—annexation. Adjacent territory that is not already a part of a fire district may be annexed in the following manner: A petition in writing by the owners of fifty per cent (50%), or more of the area of privately owned lands of the adjacent area proposed to be annexed, and who constitute a majority of the taxpaying freeholders within such proposed area to be annexed, whose names appear upon the last completed assessment roll, shall be presented to the board of county commissioners. The commissioners shall hold a hearing on such petition, in accordance with the procedure outlined in subsection (c) above: and shall allow the annexation of such proposed adjacent territory, unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the original district, and who constitute a majority of the taxpaying freeholders within the original district. Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of fifty per

cent (50%), or more, of the privately owned lands of an area which is part of any organized fire district, and who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to, and included in, any other organized fire district to which said area is adjacent. Said petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (c), above; and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within either district affected, and who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll, and provided, that such withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the fire-fighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2031, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1931; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963.

Amendments

The 1959 amendment by Ch. 48 substituted the word "adjacent" for "contiguous" wherever it appears in subd. (d) and the last paragraph and substituted "either district" for "both districts" each time it appears in the last paragraph.

The 1959 amendment by Ch. 77 in subd. (a) substituted the word "or" for "and" which appeared between the words "buying" and "maintaining"; inserted the words "or private fire service" in two places in the next to last sentence of subd. (a); substituted the words "for the purpose of furnishing" for "for the extension of" before the words "fire protection service" in the same sentence and added the last sentence to subd. (a).

The 1963 amendment incorporated both of the 1959 amendments and inserted "of

the privately owned lands" or "of the area of privately owned lands" in one place in each of subds. (a) and (b), in two places in subd. (c), and in two places in each of the paragraphs of subd. (d).

Severability Clause

Section 2 of Ch. 48, Laws 1959 read: "If any provision contained in this act shall for any reason be held invalid, such decision shall not invalidate the remaining portions of this act."

Repealing Clause

Section 3 of Ch. 48, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Constitutionality

This section, before the 1957 amendment, was unconstitutional as being in direct conflict with the due process of law clause in section 27, article III, Montana Constitution and the first clause of the fourteenth amendment to the Constitution of the United States of America. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 73, 354 P 2d 1056, 1058.

11-2009. (5148.1) Unconstitutional.

Unconstitutional

This section (Sec. 1, Ch. 148, L. 1925), authorizing establishment of fire limits within unincorporated towns, was held unconstitutional in *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501.

This section (Sec. 1, Ch. 148, L. 1925) was a denial of due process in conflict with

section 27, article III, Montana Constitution and the first clause of the fourteenth amendment to the Constitution of the United States of America. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 73, 354 P 2d 1056, 1058.

11-2010. (5149) Trustees of fire districts—mutual aid agreements.

(a) Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town or village, said commissioners may contract with a city, town or private fire company to furnish fire protection for property within said district, or shall appoint five qualified trustees to govern and manage the affairs of the fire district, who shall hold office until their successors are elected and qualified, as hereinafter provided. Qualifications of electors and trustees, terms of office, vacancies, manner and date of elections, shall, as far as possible, be the same as provided in the school election laws for school districts of the second class; except, that only electors who are taxpayers affected by the special fire district levies may vote at such elections, and be qualified to serve as trustees; and except, also, there need be no special registration of electors.

(b) Power of trustee. The trustees shall organize by choosing a chairman, and appointing one member to act as secretary. They shall prepare and adopt suitable by-laws; appoint and form fire companies that shall have the same duties, exemptions, and privileges as other fire companies. The trustees shall have the authority to provide adequate and standard fire-fighting apparatus, equipment, housing and facilities for the protection of the district; and shall prepare annual budgets and request special levies therefor. The budget laws relating to county budgets, shall, as far as applicable, apply to fire districts.

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, lying within five (5) miles of the farthest limits of the district, whether such city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by such city or town, or by such other fire district, to property included within the district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any fire district may elect to make a contract with the city fire department for fire protection, or to be included in the fire district protection facilities. Likewise, the trustees may contract to permit the fire district equipment and facilities to be used by or for such cities or towns lying within the district, or by such cities, towns, or other fire districts lying within five (5) miles of the farthest limits of the district.

(d) A mutual aid agreement is an agreement for protection against natural or man-made disasters. Fire district trustees may enter such agreements with the proper authority of

- (1) other fire districts
- (2) unincorporated municipalities
- (3) incorporated municipalities
- (4) state agencies which have fire prevention services
- (5) private fire prevention agencies
- (6) federal agencies.

History: En. Sec. 1, Ch. 107, L. 1911; 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. L. 1925; amd. Sec. 3, Ch. 97, L. 1947;

amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965.

Amendments

The 1959 amendment by Ch. 77 inserted the words "may contract with a city, town or private fire company to furnish fire protection for property within said district, or" in subd. (a).

The 1959 amendment by Ch. 118 in subd. (c) inserted the words "or with the trustees of any other fire district established in any unincorporated territory, town or village"; inserted the words

"whether such city or town or other fire district shall lie within the same county or another county"; inserted the words "or by such other fire district" and added the words "or by such cities, towns, or other fire districts lying within five (5) miles of the farthest limits of the district."

The 1965 amendment adopted both 1959 amendments and added subd. (d).

Repealing Clauses

Section 3 of Ch. 77, Laws 1959 and Sec. 2 of Ch. 118, Laws 1959 repealed all acts and parts of acts in conflict therewith.

11-2021. (5158.2) Repealed.

Repeal

This section (Sec. 2, Ch. 65, L. 1935), creating the Volunteer Firemen's Com-

pensation Fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

11-2022. (5158.3) Disability, death, insurance and pension benefits. 1 to 4. * * * [Same as parent volume.]

5. Every volunteer fireman who shall meet the qualification requirements set forth in subparagraph two (2) of section 11-2023, and who shall complete and file the claim provided for under subparagraph two (2) of section 11-2024, shall be entitled thereafter to participate in the volunteer firemen's pension plan throughout the remainder of his lifetime and to receive payments thereunder computed each year in the following manner. Whenever at the close of business on the last day of any fiscal year there shall be a balance in the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund in excess of one million dollars (\$1,000,000.00) then said excess amount shall be set aside for the payment of pensions to qualified volunteer firemen during the immediately succeeding fiscal year. The amount to be paid to each qualifying volunteer fireman shall be determined by dividing said excess amount by the number of volunteer firemen qualifying to participate in such pension plan at the beginning of such succeeding fiscal year. If such excess amount shall be sufficient to pay each such qualified volunteer fireman at least twenty dollars (\$20.00) per month throughout such succeeding fiscal year, then such pension shall be paid monthly, on or before the last day of each month of such succeeding fiscal year; but if said excess amount shall not be sufficient to pay each qualified volunteer fireman at least twenty dollars (\$20.00) per month, then each qualified volunteer fireman's full pension for that year shall be paid to him in one lump payment on or before the fifteenth day of December of such year; provided, however, that in any event the total pension payable hereunder to any qualified volunteer fireman shall not exceed the sum of twenty-five dollars (\$25.00) per month, and the amount to be set aside hereunder from the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of twenty-five dollars (\$25.00)

per month to each volunteer fireman qualified as of the beginning of such fiscal year. The fiscal year for the purpose of this act shall begin on the first day of July of each year, and end on the last day of June of each year.

History: En. Sec. 3, Ch. 65, L. 1935; Amendment
amd. Sec. 1, Ch. 37, L. 1957; amd. Sec. 1, The 1965 amendment added subsection 5.
Ch. 118, L. 1965.

11-2023. (5158.4) **Qualification for compensation.** (1) In order to qualify for the compensation provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022, the fireman must be an enrolled active member of a fire company organized under the laws of the state of Montana in an unincorporated town or village, at the time of such injury or sickness for which compensation hereunder is claimed.

(2) In order to qualify for participation in the volunteer firemen's pension plan under subparagraph five (5) of section 11-2022, a volunteer fireman must meet each of the following requirements:

(A) He must have completed a total of twenty years' service as an active volunteer fireman and as an active member of a qualified volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village; provided, that from and after July 1, 1965, no volunteer fireman shall receive credit for any year of membership in any such volunteer fire company unless throughout such year such volunteer fire company shall have maintained fire-fighting equipment in serviceable condition of a value of seven hundred fifty dollars (\$750.00) or more, and unless throughout such year such volunteer fire company, or the fire district served thereby, shall have been rated in class five (5), six (6), seven (7), eight (8) or nine (9) by the board of fire underwriters for the purpose of fire insurance premium rates; provided, further, that such twenty years of active service shall be cumulative and need not be continuous, and that such service need not be acquired with one single fire company, but may be a total of separate periods of active service with different fire companies organized under the laws of the state of Montana in different fire districts in unincorporated areas, towns or villages. From and after passage of this act, the annual period of service for the purpose of this act shall be the fiscal year; no fractional part of any year shall count toward the twenty-year service requirement, and to receive credit for any particular year a volunteer fireman must serve with one (1) particular volunteer fire company throughout that entire fiscal year;

(B) He must have attained the age of fifty-five (55) years (But he need not be an active volunteer fireman or an active member of any volunteer fire company at the time of reaching such age); and

(C) During each of the twenty (20) years for which he claims credit under subparagraph (A) above, he must have completed a minimum of thirty (30) hours of instruction in matters pertaining to fire fighting, under a program formulated and supervised by the chief of his volunteer fire company. Provided, however, that any volunteer fireman who is an active member of a volunteer fire company organized under the laws of the state of Montana in an unincorporated area, town or village at the time of passage of this act shall receive credit against the said twenty (20) year

service requirement to the extent of one (1) year's credit for each two (2) years' service completed or to be completed by him prior to July 1, 1965, as such active member of any such volunteer fire company or companies; for the purpose of this credit for prior service it shall not be necessary either that the volunteer fire company or companies with which such service has been rendered shall satisfy the requirements of subparagraph (A) above, or that the individual volunteer fireman shall during such prior service have satisfied the requirements of subparagraph (C) above; but in any event no more than ten (10) years' credit shall be allowed any such volunteer fireman by reason of such service prior to July 1, 1965. For the purpose of establishing such prior service credit, the chief of each volunteer fire company shall within sixty (60) days after July 1, 1965, prepare and file with the public employees' retirement system of the state of Montana a certificate, subscribed and verified under oath, setting forth the names and residence addresses of each of the members of his volunteer fire company who shall have qualified for one (1) or more years' credit for prior service, and setting forth the number of years of credit to which each thereof shall be entitled.

History: En. Sec. 4, Ch. 65, L. 1935; amd. Sec. 2, Ch. 118, L. 1965.

Amendment

The 1965 amendment designated the previous section as subsection (1); sub-

stituted "provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022" for "herein provided" in subsection (1); and added subsection (2), including subparagraphs (A) to (C).

11-2024. (5158.5) Claim for compensation—contents—filing—limitation on time for filing—addition of name to pension list. (1) A fireman claiming compensation under subparagraphs one (1), two (2), three (3) or four (4), of section 11-2022, must file his claim with the industrial accident board upon a form to be provided therefor, which claim shall contain the name and address of the claimant, date, place and manner of incurring of disability, name and address of attending physician or surgeon and/or nurse, if any, dates of confinement, if confined, or if not confined, dates of attendance by physician or surgeon, dates of attendance by nurse; affidavit of attending physician or surgeon as to nature of disability, number and dates of attendance and statement of charges; if confined to hospital, an affidavit of person in charge stating nature of disability, dates of confinement and expenses incurred while so confined; affidavit of chief or secretary of fire company stating that said fire company was duly organized under the laws of Montana in an unincorporated town or village, statement that claimant was, at the date of disability an active enrolled member of such company, and that the disability was incurred in line of duty; an affidavit of the nurse stating the nature of disability, dates of attendance, and statement of charges for services; said claim shall be verified by the claimant, the attending physician or surgeon and nurse, if any, and by the person in charge of the hospital, if confined; said claim shall be filed with the board within one year from date of disability.

(2) A volunteer fireman claiming eligibility under the volunteer firemen's pension plan must file his claim with the public employees' retire-

ment system upon a form to be provided therefor by such board, which claim shall contain the name, address and date of birth of the claimant; the fiscal year for which his eligibility shall commence; the years during which his service as a volunteer fireman was rendered and the name or names of the volunteer fire company or companies with which such service was rendered. Such claim shall be filed on or before the first day of May of any year. The public employees' retirement system may require such proof of age and service as it may deem proper, but the certificates filed or to be filed under section 11-2007 and subparagraph 2 of section 11-2023 shall be accepted by such board as prima facie proof of such service. If such claim be properly filed and such claimant be found by the public employees' retirement system properly qualified to participate in such volunteer firemen's pension plan, then the name of the claimant shall be added to the list of qualified volunteer firemen, and the claimant, shall then be entitled to participate in said volunteer firemen's pension plan as of the fiscal year beginning the first day of July following the filing of such claim.

History: En. Sec. 5, Ch. 65, L. 1935; amd. Sec. 3, Ch. 118, L. 1965.

Amendment

The 1965 amendment designated the previous section as subsection (1); sub-

stituted "under subparagraphs one (1), two (2), three (3) or four (4), of section 11-2022" for "hereunder" near the beginning of subsection (1); and added subsection (2).

11-2025. (5158.6) Payment of claim—beneficiaries of decedent. (1) Upon receipt of a claim under subparagraphs one (1), two (2), three (3) and four (4), or any thereof, of section 11-2022, by the industrial accident board, if the same is found to be in compliance with the provisions of subsection one (1) of section 11-2024, the board must order the allowance thereof, and pay the same by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital.

(2) All payments under the volunteer firemen's pension plan shall be approved by the public employees' retirement system and paid by warrants drawn upon the earmarked revenue fund, payable to the order of the individual qualified volunteer fireman; provided, however, that in the event of the death of any such qualified volunteer fireman after the beginning of any fiscal year but before he has received his full pension for that year, and if such deceased volunteer fireman shall have left a widow, or a child or children under the age of eighteen, or both, then any unpaid part of his said pension for said fiscal year shall be paid by a warrant or warrants drawn upon the earmarked revenue fund and payable to the order of said widow, if any, or if none, then to the guardian or other person having custody of the said child or children under the age of eighteen years. If such deceased volunteer fireman shall leave neither widow nor child under the age of eighteen years, then his pension shall terminate at the end of the month prior to the month in which his death occurs; and in any event such pension shall terminate no later than the end of the fiscal year in which death occurs.

History: En. Sec. 6, Ch. 65, L. 1935; amd. Sec. 192, Ch. 147, L. 1963; amd. Sec. 4, Ch. 118, L. 1965.

Amendments

The 1963 amendment deleted the words "by warrants drawn upon the volunteer firemen's fund" after the words "pay the same."

The 1965 amendment designated the previous section as subsection (1); in-

serted "under subparagraphs one (1), two (2), three (3) and four (4), or any thereof, of section 11-2022" near the beginning of subsection (1); inserted "subsection one (1) of" before "section 11-2024"; restored "by warrants drawn upon the volunteer firemen's fund" deleted by the 1963 amendment; and added subsection (2).

11-2026. (5158.7) Administration of act. The industrial accident board of the state of Montana shall administer this act, and all payments made hereunder shall be made by warrants drawn by the board.

History: En. Sec. 7, Ch. 65, L. 1935; amd. Sec. 193, Ch. 147, L. 1963.

"from the volunteer firemen's compensation fund" after the words "shall be made."

Amendment

The 1963 amendment deleted the words

11-2028. (5158.9) Earnings to be part of moneys. All earnings made by moneys earmarked by section 11-2030 by reason of interest paid for the deposit thereof, or otherwise, shall be credited to and become a part of such moneys.

History: En. Sec. 9, Ch. 65, L. 1935; amd. Sec. 194, Ch. 147, L. 1963.

"moneys earmarked by section 11-2030" for "the volunteer firemen's compensation fund"; and substituted "such moneys" for "said fund" at the end of the section.

Amendment

The 1963 amendment substituted

11-2029. (5158.10) Reports of public employees' retirement system. (1) The public employees' retirement system shall, at the time specified in section 92-842 for making report therein provided, make a report to the governor covering the operations and proceedings for the preceding fiscal year relative to its administration under this act, with such suggestions or recommendations as it may deem of value for public information.

(2) The public employees' retirement system shall make a report to the governor before October 1 of each year. The report shall contain information on operations and proceedings for the prior fiscal year relative to the administration of the volunteer firemen's pension plan; it shall also contain suggestions and recommendations as it may deem of value for public information.

(3) Copies of any such report shall be made available to the chief or other representative of any volunteer fire company or companies within the state of Montana which shall at any time request the same.

History: En. Sec. 10, Ch. 65, L. 1935; amd. Sec. 5, Ch. 118, L. 1965.

previous section as subsection (1); substituted "public employees' retirement system" for "industrial accident board" at the beginning of subsection (1); and added subsections (2) and (3).

Amendment

The 1965 amendment designated the

11-2030. (5158.11) Fire insurance premium tax to be paid into fund. The state auditor and ex-officio commissioner of insurance of the state of Montana shall annually deposit in the earmarked revenue fund, such

sum as shall be equivalent to five per cent (5%) of premium taxes collected from insurers authorized to effect insurance against risks enumerated in subsection 2 of section 11-1919, as shall remain after the amounts provided for by section 11-1919 shall have been first deducted. Such moneys shall be used for the payment of claims and administrative costs as provided in section 11-2025 and 11-2026.

History: En. Sec. 11, Ch. 65, L. 1935; amd. Sec. 1, Ch. 125, L. 1947; amd. Sec. 1, Ch. 164, L. 1959; amd. Sec. 191, Ch. 147, L. 1963.

Amendments

The 1959 amendment substituted the word "insurers" for "insurance companies" and the reference to "subsection 2 of section 11-1919" for a reference to "paragraph 1 of section 40-1409 pursuant to section 40-1302."

The 1963 amendment substituted "the earmarked revenue fund" for "the 'Volun-

teer Fireman's Compensation Fund,' herein created"; and added the second sentence.

Repealing Clause

Section 2 of Ch. 164, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 164, Laws 1959 read "This act shall be in full force and effect from and after January 1, 1960."

CHAPTER 22—SPECIAL IMPROVEMENT DISTRICTS

- Section 11-2202. Special improvement districts—placing wires underground—cost per lineal foot.
- 11-2204. Resolution of intention—notice—materials.
- 11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds.
- 11-2226. Construction of sidewalks, curbs and gutters without formation of special improvement district.
- 11-2231. Form of bonds and warrants.
- 11-2288. Investment of interest and sinking fund moneys.

11-2201. (5225) Special improvements—powers of city council.

Street Improvements

A city may create a special improvement district for street improvements where the street is also a part of a state highway and, in such instance, the con-

tracts for the work must be awarded by the state highway commission. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1062.

11-2202. (5226) Special improvement districts—placing wires underground—cost per lineal foot. (1) Whenever the public interest or convenience may require, the city council is hereby authorized and empowered to create special improvement districts, for building, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, and for building and constructing municipal swimming pools and other recreation facilities, and order the whole, or any portion or portions, either in length or width, of any one or more of the streets, avenues, alleys, or places or public ways of any such city, graded or regraded to the official grade, planked or replanked, paved or repaved, macadamized or remacadamized, graveled or regreveled, piled or repiled, capped or recapped, surfaced or resurfaced, oiled or reoiled, and to order the construction or reconstruction therein of sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings, including the planting of grassplots and setting out of trees; sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes,

or either or both thereof, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances; waterworks, water mains, and extensions of water mains; pipes, hydrants, hose connections for irrigating purposes; appliances for fire protection, tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect the same from overflow or injury by water; the opening of streets, avenues, and alleys; the planting of trees thereon; and to maintain, preserve and care for any and all of the improvements herein mentioned; and the construction or reconstruction in, over, or through property or rights of way owned by such city, of tunnels, sewers, ditches, drains, conduits, and channels for sanitary and drainage purposes, or either or both thereof, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances; pipes, hose connections for irrigating, hydrants and appliances for fire protection; and breakwaters, levees, retaining walls and bulkheads; walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in any such city from overflow by water; and to order any work to be done which shall be deemed necessary to improve the whole or any portion of such streets, avenues, sidewalks, alleys, or places or public ways, or property, or right of way of such city. The city council is also hereby authorized to create a district as hereinafter specified, for the purpose of defraying the cost of acquiring private property for the purpose of opening, widening, or extending any street, avenue, or alley within the corporate limits of such city.

(2). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 89, L. 1913; amd. Sec. 1, Ch. 142, L. 1915; amd. Sec. 1, Ch. 175, L. 1919; re-en. Sec. 5226, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1961; amd. Sec. 1, Ch. 206, L. 1965.

Amendments

The 1961 amendment near the beginning of subd. (1) after the words "special improvement districts," inserted the words "for building, constructing and maintaining devices intended to protect the safety

of the public from open ditches carrying irrigation or other water."

The 1965 amendment inserted "and for building and constructing municipal swimming pools and other recreation facilities" after "ditches carrying irrigation or other water" in the first sentence of subd. (1).

References

Cited or applied in *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058, 1061.

11-2204. (5227) Resolution of intention—notice—materials.

(1). * * * [Same as parent volume.]

(2) Upon having passed such resolution the council must give notice of the passage of such resolution of intention, which notice must be published for five days in a daily newspaper, or in some one issue of a weekly paper published in the city or town, or in case no newspaper be published in such city, then by posting for five days in three public places in the city or town, and a copy of such notice shall be mailed to every person, firm, or corporation, or the agent of such person, firm, or corporation having real property within the proposed district listed in his name upon the last completed assessment roll for state, county and school dis-

strict taxes, at his last known address, upon the same day such notice is first published or posted. Such notice must describe the general character of the improvement or the improvements so proposed to be made, and state the estimated cost thereof, and designate the time when and the place where the council will hear and pass upon all protests that may be made against the making of such improvements, or the creation of such district; and said notice shall refer to the resolution on file in the office of the city clerk for the description of the boundaries. The city council may include in one proceeding under one resolution of intention and in one contract any of the different kinds of work mentioned in this act, and any number of streets and rights-of-way, or portions thereof, and it may except therefrom any of said work, already done, upon a street to the official grade.

(3) and (4). * * * [Subdivisions (3) and (4), same as parent volume.]

History: En. Sec. 3, Ch. 89, L. 1913; amd. Sec. 2, Ch. 142, L. 1915; re-en. Sec. 5227, R. C. M. 1921; amd. Sec. 1, Ch. 261, L. 1959.

Amendment

The 1959 amendment in subd. (2) inserted the word "real" before the word "property" and inserted the words "listed in his name upon the last completed assessment roll for state, county and school district taxes."

Repealing Clause

Section 2 of Ch. 261, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Construction of Section

The words "approximate estimate" should not be construed liberally. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 814, 815.

Notice

Until there is service of notice in strict compliance with the statute, no jurisdiction would attach to the municipality. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058.

Notice of the resolution of intention given by city to landowners was not sufficient where it did not contain an "approximate estimate" of the cost of improvements, the original estimate having been increased by 7½%. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 816.

The landowner whose property is affected by the special improvement district must be given notice of the intention of the city's intent to create one. The notice must be sufficiently definite to apprise the landowner of the extent, nature and cost of the various improvements proposed. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 814.

Parties who have either received notice or waived it by appearing to protest may

not take advantage of the failure of notice to other parties who have neither protested nor appeared as parties to the suit. *Shaw v. City of Kalispell*, 135 M 284, 340 P 2d 523, explained in 140 M 211, 216, 369 P 2d 803.

This section does not require the city clerk to mail copies of the required notice to persons who are neither record owners nor personally known owners of an interest in property in the district, since they have been careless in failing to record their ownership. *Shaw v. City of Kalispell*, 135 M 284, 340 P 2d 523, explained in 140 M 211, 216, 369 P 2d 803.

Landowners who appear before the city council to protest the establishment of an improvement district do not thereby waive their right to restrain its establishment on the ground of defective publication of notice. *Guffey v. City of Helena*, 140 M 211, 369 P 2d 803, 806.

Operation and Effect

A special improvement district for the purpose of raising funds was void where one of the property owners affected was not mailed a notice. *Wood v. City of Kalispell*, 131 M 390, 310 P 2d 1058.

Public Hearing

The statute contemplates a public hearing where the various objections made to the resolution of intention may be aired before actual work on the project has commenced. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 813.

Purpose of Resolution

Notification is the prime purpose of the statute so that taxpayers will not be burdened with some improvement which they do not want, cannot afford, or do not need. *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 813.

The essential purpose of a resolution of intention is to: (1) apprise the taxpayers that the city intends to propose a special

improvement district; (2) what area will be encompassed in the district; (3) what type and character of improvements will be included within the district; and (4) the cost of the improvements to be made.

Koich v. City of Helena, 132 M 194, 315 P 2d 811, 813.

References

Cited in Cyr v. City of Missoula, 135 M 94, 337 P 2d 365, 366.

11-2206. (5229) Protests against proposed work.

References

Cited or applied in Wood v. City of Kalispell, 131 M 390, 310 P 2d 1058, 1061;

Cyr v. City of Missoula, 135 M 94, 337 P 2d 365, 366; Shaw v. City of Kalispell, 135 M 284, 340 P 2d 523, 528.

11-2207. (5230) Jurisdiction to order proposed improvements.

References

Cited in Koich v. City of Helena, 132 M 194, 315 P 2d 811, 812.

11-2209. (5232) Bid for work and award of contract.

References

Cited in Koich v. City of Helena, 132 M 194, 315 P 2d 811, 812.

11-2214. (5238) Methods of payments of improvements.

Street Improvements

A city may create a special improvement district for street improvements where the street is also a part of a state highway and, in such instance, the con-

tracts for the work must be awarded by the state highway commission. Wood v. City of Kalispell, 131 M 390, 310 P 2d 1058, 1062.

11-2218. May issue revenue bonds—sinking fund—refunding revenue bonds. (1) Any such municipality may issue and sell negotiable revenue bonds for the construction of any such water or sewer system or combined water and sewer system when authorized so to do by a majority vote of the qualified electors voting on the question at an election called by the city council or other governing body of the municipality for that purpose, and noticed and conducted in accordance with the provisions of sections 11-2308 to 11-2310, inclusive; which bonds shall bear interest at a rate or rates and shall be sold at a price resulting in an average net interest cost, computed to the stated bond maturity dates, of not more than six per cent (6%) per annum and all bonds shall mature within forty (40) years from date of bonds, and may be registered as to ownership of principal only with the treasurer of said municipality, if so directed by the governing body. No bonds shall be sold for less than par, and each of said bonds shall state plainly on its face that it is payable only from a sinking fund, naming said fund and the ordinance and resolution creating it, and that it does not create an indebtedness within the meaning of any charter, statutory or constitutional limitation upon the incurring of indebtedness.

(2) Prior to the issuance of said bonds the city council or other governing body of such municipality shall adopt an ordinance or resolution authorizing the issuance and sale of said bonds, and must create a sinking fund for the payment of the bonds and the interest thereon and charges of the fiscal agency for making payment of the bonds and interest thereon.

(3) At or before the issuance and sale of any such bonds, the governing body shall, by resolution or ordinance, set aside to such sinking fund and pledge to the payment of the bonds and the interest thereon the net income and revenues of the system, including all additions thereto and replacements and improvements thereof subsequently constructed or acquired, up to an amount sufficient to provide for the payment of the principal and the interest on the bonds as such principal and interest shall become due and payable, and to accumulate and maintain reserves securing such payments in such amount as shall be deemed by the governing body to be necessary and expedient.

(4) The said net income and revenues above-mentioned shall be construed to mean all the gross income from said system less normal, reasonable and current expenses of operation and maintenance thereof.

(5) Said payments above-mentioned shall constitute a first and prior charge and lien on the entire net income and revenues derived from the operation of said system, provided that the governing body shall have power from time to time to establish the relative priority of the liens of successive issues of bonds upon said net income and revenues, subject to any restrictions contained in the ordinances or resolutions authorizing bonds of prior issues.

(6) Any such municipality, by ordinance or resolution adopted by its governing body, and without an election, may issue and sell negotiable revenue bonds in the manner provided in this section, to refund bonds previously issued for any of the foregoing purposes, whether issued under authority of this section or any other applicable law. Refunding bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less than par plus accrued interest, but nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any principal or interest due which can be paid from revenues then on hand.

(7) Any municipality having issued bonds payable from net revenues of its water and sewer system or combined water and sewer systems, whether under authority of this section or otherwise, may issue additional bonds after authorization by the qualified electors in the manner hereinabove provided, to finance the reconstruction and improvement of such system and the construction of additions thereto, and may provide that such additional bonds shall be payable from said net revenues on a parity with the outstanding bonds of such previous issues, subject to any restrictions upon such issuance which may be imposed by the resolutions or ordinances authorizing said outstanding bonds; or the governing body may provide for the issuance of refunding bonds, without an election, to retire such outstanding bonds and may, if desired, combine such refunding issue with the issue authorized by the electors for reconstruction,

improvements and additions, or may include the amount required for such refunding in the amount of such additional issue when submitted to the electors.

(8) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvements and additions and the lien of such new bonds upon the revenues of the system or systems must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent ($\frac{3}{8}$ of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(9) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the Federal Reserve System and has a combined capital and surplus not less than one million dollars (\$1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity, or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: Banks for Cooperatives, Federal Home Loan Banks, Federal Intermediate Credit Banks, Federal Land Banks, and the Federal National Mortgage Association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(10) Revenues and other funds on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by

the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (9) hereof, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. Sec. 2, Ch. 149, L. 1943; amd. Sec. 1, Ch. 146, L. 1951; amd. Sec. 2, Ch. 98, L. 1955; amd. Sec. 1, Ch. 38, L. 1957; amd. Sec. 1, Ch. 51, L. 1963.

Amendment

The 1963 amendment divided the section into numbered subsections; combined two paragraphs into one sentence in subsection (2); inserted the words "in the manner provided in this section" in the first sentence of subsection (6); added the second and third sentences to subsection (6); substituted subsections (8), (9), and (10) for sentences reading: "Said refunding bonds, or any bonds of any such combined issue, may be exchanged at par and accrued interest for all or part of said outstanding bonds, with the consent of the holders thereof, or may be deposited in escrow for the purpose of such exchange with a suitable bank or trust company within or without the state; or proceeds of the sale of the refunding or combined issue may be similarly deposited in escrow and applied to the redemption of all or part of the outstanding bonds at maturity or when the same are next prepayable according to their terms, and to the payment of accrued interest thereon and of any premium payable for redemption prior to maturity, and to the purchase and retirement of any outstanding bonds which can be so purchased at a price less than par

plus interest to accrue to maturity or, if prepayable, at a price less than par plus interest to accrue to their earliest possible redemption date plus any premium payable upon redemption prior to maturity; and any revenue bond proceeds so deposited in escrow may be invested in general obligations of the United States pending the use thereof for the purposes herein authorized, and any such investments shall be deposited with the escrow agent for safekeeping. Nothing herein shall, however, be deemed to authorize the refunding of any matured bonds for the payment of which net revenues on hand are sufficient, or to authorize the refunding of any outstanding bonds at a higher rate of interest unless available net revenues are insufficient to pay principal and interest due thereon, or unless the refunding is authorized simultaneously with the issuance of additional bonds for reconstruction, improvements or additions, which, according to the terms of the outstanding bonds, must be junior and subordinate to the lien of such outstanding bonds upon the net revenues"; and made minor changes in phraseology.

Effective Date

Section 2 of Ch. 51, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 21, 1963.

11-2226. (5244) Construction of sidewalks, curbs and gutters without formation of special improvement district. The city council may order sidewalks, curbs and gutters, or any combination thereof, constructed in front of any lot or parcel of land without the formation of a special improvement district, and whenever the council shall order any such sidewalk, curb and gutter, or any combination thereof, constructed, such order shall be entered upon the minutes of the council and shall name the street along which said sidewalk, curb and gutter, or any combination thereof, is to be constructed. After the making of such order, written notice thereof shall be given the owner or agent of such property, in such manner as the council may direct. If the owner or agent of such lot or parcel of land shall fail or neglect for a period of thirty days after the

date of service of such notice to cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, the city may construct or cause such sidewalk, curb and gutter, or any combination thereof, to be constructed, and shall assess the cost thereof, including engineering costs and the costs enumerated in section 11-2228 of this code, against the property in front of which the same is constructed.

When any such sidewalk, curb and gutter, or any combination thereof, is constructed by or under direction of the city council, payment for the construction thereof shall be made by special warrants in such form as may be prescribed by ordinance drawn against a fund to be known as special sidewalk, curb and gutter fund, which warrants shall bear interest at the rate of six per centum (6%) per annum, and the council may provide for the payment of said interest annually.

The payment of assessments to defray the cost of construction of said sidewalks, curbs and gutters, or any combination thereof, may be spread over a term of not to exceed eight years, payment to be made in equal annual installments.

The city council shall annually, and before the first Monday of October of each year, pass and adopt a resolution levying an assessment and tax against each lot or parcel of land in front of which sidewalks, curbs and gutters, or any combination thereof, have been constructed under orders of the city council. Said resolution levying such assessment shall be in every manner prepared and certified the same as resolutions levying assessments for the making of improvements in special improvement districts.

History: En. Sec. 20, Ch. 89, L. 1913; re-en. Sec. 5244, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1929; amd. Sec. 1, Ch. 19, L. 1965.

Amendment

The 1965 amendment substituted "side-

walk(s), curb(s) and gutter(s), or any combination thereof" in eight places for "sidewalk(s) and curb(s)"; and changed the name of the special sidewalk and curb fund referred to in the second paragraph to "special sidewalk, curb and gutter fund."

11-2228. (5246) Costs and expenses considered as cost of improvements.

References

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2229. (5247) Assessments as lien upon property.

References

Cited in *United States v. Christensen*, 218 F Supp 722, 726.

11-2231. (5249) Form of bonds and warrants. All costs and expenses incurred in the construction of any improvements specified in this act, in any improvement district, shall be paid for by special improvement district bonds or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. _____
United States of America,
State of Montana

Warrant or _____ Dollars
(Bond No. _____) \$ _____

Interest at the rate of _____ per cent per annum, payable annually. Special improvement district coupon warrant or bond _____, Montana

Issued by the city of _____, Montana.

The treasurer of the city of _____, Montana, will pay to bearer, the sum of _____ dollars as authorized by resolution No. _____ as passed on the _____ day of _____, 19____, creating special improvement district No. _____ for the construction of the improvements and the work performed as authorized by said resolution to be done in said district, and all laws, resolutions, and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the city treasurer of _____, Montana.

This warrant (or bond) bears interest at the rate of _____ per cent per annum from the day of registration of this warrant (or bond), as expressed herein, until the date called for redemption by the city treasurer. The interest on this warrant (or bond) is payable annually on the first day of _____ in each year, unless paid previous thereto, and as expressed by the interest coupons hereto attached, which bear the engraved facsimile signature of the mayor and city clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement district, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the city at any time there are funds to the credit of said special improvement district fund for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done, precedent to the issuance of this warrant (or bond), have been properly done, happened and been performed, in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the city of _____, Montana relating to the issuance thereof.

(seal)

Dated at _____, Montana, this _____ day of _____, 19____.

City of _____, Montana.

By: _____, Mayor
_____, City Clerk

Registered at the office of the city treasurer of _____, Montana, this _____ day of _____, 19____.

_____, City Treasurer.

And the same shall be drawn against the special improvement district fund created for the district, and shall bear interest at a rate not exceeding six (6%) per cent per annum, from the date of registration until called for redemption or paid in full, interest to be payable annually on the first

day of January of each year, unless the council prescribes another date. Such warrants (or bonds) shall bear the signatures of the mayor and clerk, and shall bear the corporate seal of the city. They shall be registered in the office of the clerk and treasurer, and if interest coupons be attached thereto, they shall also be so registered and shall bear the signatures of the mayor and clerk. Said bonds shall be in denominations of one hundred (\$100) dollars or fractions or multiples thereof, and may be issued in installments, and may extend over a period not to exceed twenty (20) years. Such warrants (or bonds) shall be redeemed by the treasurer when there are funds in the special improvement district fund against which said warrants (or bonds), on presentation of the coupons belonging thereto, and any funds remaining shall be applied to the payment of the principal and the redemption of the warrants (or bonds) in the order of their registration; and provided, further that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the treasurer, who shall give notice by publication once in a newspaper published in the city, or at the option of the treasurer, by written notice to the holder or holders of such warrants (or bonds) if their address be known, of the number of warrants (or bonds) and the date on which payment will be made, which date shall not be less than ten (10) days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

History: En. Sec. 25, Ch. 89, L. 1913; amd. Sec. 8, Ch. 142, L. 1915; re-en. Sec. 5249, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1937; amd. Sec. 1, Ch. 177, L. 1945; amd. Sec. 5, Ch. 260, L. 1959.

Amendment

The 1959 amendment, in the last paragraph, in the second sentence, substituted the words "bear the signatures of" for "be

signed by the mayor and clerk" and deleted a proviso from the third sentence in that paragraph which read "provided, however, that said coupons may bear the facsimile signature of said officers in the discretion of the city council."

References

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2232. (5250) Payments under contracts.

References

Cited in *Koich v. City of Helena*, 132 M 194, 315 P 2d 811, 812.

11-2241. (5255) Owner of property—definition of terms, etc.

Publication of Notice

Landowners who appear before the city council to protest the establishment of an improvement district do not thereby waive their right to restrain its estab-

lishment on the ground of failure to publish notice in successive issues of a newspaper. *Guffey v. City of Helena*, 140 M 211, 369 P 2d 803, 806.

11-2263. (5272) Street sprinkling.

Paving Projects

Where the work represents either a minor or major repaving or resurfacing project, it cannot be financed by special improvement taxes for the creation of a

sprinkling district, but must be financed under section 11-2401. *Cyr v. City of Missoula*, 135 M 94, 337 P 2d 365; *Peterson v. City of Missoula*, 135 M 96, 337 P 2d 367.

11-2288. Investment of interest and sinking fund moneys. The governing body of a county or city in which a special improvement district is located, may invest interest and sinking fund moneys of the district in time deposits of a bank insured by the Federal Deposit Insurance Corporation, or in direct obligations of the United States government payable within one hundred eighty (180) days from the time of investment. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn.

History: En. Sec. 1, Ch. 45, L. 1965.

Title of Act

An act permitting the investment of interest and sinking fund moneys of special improvement districts.

CHAPTER 23—MUNICIPAL BONDS AND INDEBTEDNESS

Section 11-2310. Who are entitled to vote—registration of electors.

11-2316. Form and execution of bonds.

11-2310. (5278.10) Who are entitled to vote—registration of electors. Only such registered electors of the city or town whose names appear upon the last preceding assessment roll for state and county taxes, as taxpayers upon property within the city or town, shall be entitled to vote upon any proposition of issuing bonds by the city or town. Upon the adoption of the resolution calling for the election the city or town clerk shall notify the county clerk of the date on which the election is to be held and the county clerk must cause to be published in the official newspaper of the city or town, if there be one, and if not in a newspaper circulated generally in the said city or town and published in the county where the said city or town is located, a notice signed by the county clerk stating that registration for such bond election will close at noon on the fifteenth (15th) day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least five (5) days prior to the date when such election books shall be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the qualified electors of such city or town who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state, county and school district taxes and who are entitled to vote at such election and shall prepare precinct registers for such election as provided in section 23-515 and deliver the same to the city or town clerk who shall deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such lists of qualified electors.

History: En. Sec. 10, Ch. 160, L. 1931; amd. Sec. 1, Ch. 182, L. 1939; amd. Sec. 17, Ch. 64, L. 1959.

Amendment

The 1959 amendment, in the second paragraph, substituted the words "precinct registers" for the words "poll books."

11-2316. (5278.16) Form and execution of bonds. At the time of the sale of the bonds, or at a meeting held thereafter, the city or town council shall prescribe the form of the bonds whether amortization or serial bonds, and of the coupons to be attached thereto. Each and every bond and

every coupon attached thereto must be signed by the mayor of the city or town, by the treasurer thereof, and must be attested by the city or town clerk, and each bond shall have the city or town seal affixed thereto.

History: En. Sec. 16, Ch. 160, L. 1931;
amd. Sec. 6, Ch. 260, L. 1959.

Amendment

The 1959 amendment deleted a proviso from the end of this section which authorized facsimiles of the signatures of the officers required to sign the coupons.

CHAPTER 24—MUNICIPAL REVENUE BOND ACT OF 1939

Section 11-2402. Definitions.

11-2404. Authorization of undertaking—form and contents of bonds.

11-2414. Refunding revenue bonds.

11-2402. Definitions. Whenever used in this act, unless a different meaning clearly appears from the context:

(a) The term “undertaking” shall mean any one or a combination of the following: water, and sewerage systems, together with all parts thereof and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment, disposal works, public airport construction and public airport building; or other revenue producing facilities and services authorized in these codes for cities and towns.

(b) The term “municipality” shall include any city or any town, however organized.

(c) The term “governing body” shall include bodies and boards, by whatsoever names they may be known, having charge of finances and management of a municipality.

History: En. Sec. 2, Ch. 126, L. 1939;
amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1,
Ch. 111, L. 1959.

facilities and services authorized in these codes for cities and towns.”

Repealing Clause

Amendment

The 1959 amendment in subd. (a) added the words “or other revenue producing

Section 2 of Ch. 111, Laws 1959 repealed all acts and parts of acts in conflict therewith.

11-2404. Authorization of undertaking—form and contents of bonds. The acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking may be authorized under this chapter, and bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the municipality, when authorized by a majority of the taxpayers voting upon such question at a special election noticed and conducted as provided in sections 11-2308 to 11-2310, inclusive, and said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking as in this chapter provided and ordered said special election; provided, that the issuance of refunding revenue bonds may be authorized by resolution or resolutions of the governing body of the municipality without an election.

Said bonds shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, payable semiannually, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty (40) years from their respective dates, may be payable in such place or places, may carry such registration privileges, may be subject to such terms of redemption, may be executed in such manner, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide. Said bonds shall be sold at not less than par. Said bonds may be sold at private sale to the United States of America or any agency, instrumentality or corporation thereof. Unless sold to the United States of America or agency, instrumentality or corporation thereof, said bonds shall be sold at public sale after notice of such sale published once at least five (5) days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California, except that, in the event the bond issue is in an amount of less than one hundred fifty thousand dollars (\$150,000), the bond issue shall be advertised at least five (5) days prior to such sale in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco, and also in a newspaper as specified in section 16-1201 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 52, and once by Ch. 264. Neither amendatory act mentioned nor incorporated the changes made by the other. However, since the two amendments do not appear to conflict, the compiler has made a combined section incorporating both. It should be noted,

however, that Ch. 264 does not take effect until January 1, 1965.

Amendments

Chapter 52, Laws 1963, added to the fourth sentence in the second paragraph all of the language following "San Francisco, California" and pertaining to bond issues of less than \$150,000.

Chapter 264, Laws 1963, substituted "as provided by the Uniform Commercial Code—Investment Securities" at the end of the section for "within the meaning of and for all the purposes of the negotiable instruments law."

11-2414. Refunding revenue bonds. (1) Refunding revenue bonds issued as authorized in sections 11-2403 and 11-2404 shall be governed by all of the provisions of this chapter as fully as bonds issued for the initial financing of any undertaking, and by the further provisions of this section.

(2) Refunding revenue bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds, or may be sold at a price not less

than par plus accrued interest. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of such outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable, if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

(3) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient, or if the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment or extension and the lien of such new bonds upon the revenues of the undertaking must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds, as applied to circumstances existing on the date of refunding. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least three-eighths of one per cent ($\frac{3}{8}$ of 1%) less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(4) In any case where refunding bonds are issued and sold six (6) months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company, having its principal place of business within or without the state, which is a member of the Federal Reserve System and has a combined capital and surplus not less than one million dollars (\$1,000,000), and shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption, and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date, and any premium required for redemption on such date; and the resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom, and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

(5) Revenues and other funds on hand, in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed as provided in subsection (4) hereof, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1963.

ditions of the refunding of municipal water and sewer revenue bonds.

Title of Act

An act to amend Chapter 24, Title 11, Revised Codes of Montana, 1947, by the addition of section 11-2414, providing regulations governing the terms and con-

Effective Date

Section 2 of Ch. 50, Laws 1963 provided the act should be in full force and effect from and after its passage and approval. Approved February 21, 1963.

CHAPTER 26—DAMAGE CAUSED BY CHANGE OF GRADE

11-2601. (5300) Damages must be paid on change of grade.

Change of Grade Outside City or Town

Court properly refused state's requested instructions to the effect that this section could be construed to mean that no compensation may be awarded for a

change of grade when the highway involved is not located within the limits of a city or town. State Highway Commission v. Keneally, 142 M 256, 384 P 2d 770.

11-2604. (5303) Appeals and proceedings thereunder.

Cross-Reference

Application of Montana Rules of Civil Procedure to appeal from appraisal, see M. R. Civ. P., Rule 81(a), Table A.

CHAPTER 27—BUILDING REGULATIONS—ZONING COMMISSION

11-2707. (5305.7) Board of adjustment.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

11-2710. Repealed.

Repeal

This section (Sec. 1, Ch. 171, L. 1959), giving zoning powers to boards of county commissioners, was repealed by Sec. 12, Ch. 246, Laws 1963.

Unconstitutional

This section (Sec. 1, Ch. 171, L. 1959), authorizing county commissioners to exer-

cise building and zoning regulatory powers was invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

CHAPTER 28—VACATION AND ABANDONMENT OF STREETS, PARKS AND TOWNSITES

11-2801. (5306) Discontinuation of streets—procedure.

Evidence of Public Detriment

Where the record did not show that the commissioners made a finding of fact that a street could be closed without detriment to the public interest but it did show a

detriment to abutting landowners, to the city, and to the public interest generally, the petition for discontinuance should have been denied. *Miller v. Schrock*, 135 M 409, 340 P 2d 154.

CHAPTER 30—ENTRY TOWNSITES ON PUBLIC DOMAIN FOR UNINCORPORATED CITIES AND TOWNS

11-3014. (5344) Adverse claims—actions for possession.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

11-3026. (5356) District judge authorized to execute deeds, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

CHAPTER 32—COMMISSION-MANAGER FORM OF GOVERNMENT

Section 11-3215. Nomination of candidates—primary election.

11-3248. Compensation of commissioners and mayor.

11-3210. (5409) Powers of municipalities, etc.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

11-3215. (5414) Nomination of candidates—primary election. (1) Candidates to be voted for at all general municipal elections at which commissioners are to be elected under the provisions of this act shall be nominated by a primary election, and no other names shall be placed upon the general ballot except those nominated in the manner hereinafter prescribed. The primary election for such nominations shall be held on the last Tuesday of August of the odd-numbered years.

(2) to (4). * * * [Same as parent volume.]

(5) In the event the number of legally qualified candidates for the office of commissioner at such primary election does not exceed twice the number of vacancies in the commission to be filled, no municipal primary election for the nomination of candidates for the office of commissioner shall be held in said city for said year and such legally qualified candidates shall be deemed duly nominated and shall be placed on the general ballot.

History: En. Sec. 16, Ch. 152, L. 1917; re-en. Sec. 5414, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1961.

Amendment

The 1961 amendment near the end of the first sentence in subd. (1) changed

"except those elected" to "except those nominated"; and added subd. (5).

Repealing Clause

Section 2 of Ch. 36, Laws 1961 repealed all acts and parts of acts in conflict therewith.

11-3248. (5447) Compensation of commissioners and mayor. The salary of each commissioner may be as follows: For each meeting attended, cities or towns with less than twenty-five thousand inhabitants, twenty dollars (\$20.00); cities with more than twenty-five thousand inhabitants, not to exceed forty dollars (\$40.00); provided, that not more than one fee shall be paid for any one day. The salary of the commissioner acting as mayor may be one and one-half times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1949; amd. Sec. 1, Ch. 71, L. 1965.

daily compensation from \$10 to \$20 in cities of less than 25,000, and from \$20 to \$40 in cities of over 25,000.

Amendment

The 1965 amendment substituted "may" for "shall" in the preliminary clause and in the last sentence; and increased the

Effective Date

Section 1 of Ch. 71, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

CHAPTER 35—CITY AND COUNTY CONSOLIDATED GOVERNMENT (continued)

Section 11-3518. Police department—powers of officers—director—duties and powers—designation as sheriff—deputies—tenure of officers—police reserve funds.

11-3523. Fire department—director and chief—voluntary fire districts continued—law governing districts.

11-3524. Firemen's tenure—firemen's disability and pension funds—how continued—protection of rights in.

11-3518. (5520.78) Police department—powers of officers—director—duties and powers—designation as sheriff—deputies—tenure of officers—police reserve funds. The police department shall be in charge of a director who shall be chief of the police force of the municipality. Officers and patrolmen of the police department, subordinate to the director, shall have the powers and perform the duties conferred on and required of police officers and patrolmen in cities and towns by the laws of this state and such powers and duties as may be conferred and required by the ordinances of the municipality. The director shall have the powers and perform the duties conferred on and required of sheriffs and police officers and patrolmen shall have the powers and perform the duties conferred on and required of deputy sheriffs by the general laws of the state. For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees and orders of court and making sales thereunder and returns thereof, the director shall be known and designated as "Sheriff of the city and county of _____" and each police officer and patrolman shall be known and designated as deputy sheriff.

Any police officer employed by any police department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall have

the same job tenure rights as though no such election and qualification had taken place. Any such police officer who has vested rights in any police reserve fund shall maintain prior vested rights in such fund upon its transfer to a consolidated county municipality. Any police reserve fund established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall be continued as such for the police department of the municipality, subject, however, to the prior vested rights of any police officer employed by any police department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act. The board of trustees of such police reserve fund shall consist of the president, the director of finance, the director of law and two (2) members of the police department from the active list of the police officers of said municipality, who shall be selected by a majority vote of the members of the police department on the active list of said municipality. Such selection shall be made between the first and tenth day of May in each year and said active police officer members of said board shall serve overlapping two (2) year terms. Except as provided in this section, the police reserve fund shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

History: En. Sec. 77, Ch. 121, L. 1923;
amd. Sec. 1, Ch. 190, L. 1961.

Amendment

The 1961 amendment added a new second paragraph.

11-3523. (5520.83) Fire department—director and chief—voluntary fire districts continued—law governing districts. (a) The fire department of the municipality shall be in charge of a director who shall be chief thereof and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

(b) Provided that notwithstanding any other provision of law the adoption of a consolidated county municipal government shall have no effect on the existence, rights or duties of any voluntary fire department or fire district created and legally in existence pursuant to the provisions of chapter 20, Title 11, Revised Codes of Montana, 1947.

(c) Provided further that nothing in chapter 34, Title 11, Revised Codes of Montana, 1947, shall be construed to prohibit the creation of voluntary fire departments or fire districts pursuant to the provisions of chapter 20, Title 11, Revised Codes of Montana, 1947, within consolidated county municipalities.

(d) Voluntary fire departments or fire districts within consolidated county municipalities shall only be organized, created, supported, financed, dissolved, managed, and their boundaries shall only be changed, pursuant to the provisions of chapter 20, Title 11, Revised Codes of Montana, 1947. These organizations may enter mutual aid agreements as provided by section 11-2010, R. C. M. 1947.

History: En. Sec. 82, Ch. 121, L. 1923;
amd. Sec. 1, Ch. 191, L. 1961; amd. Sec. 2,
Ch. 2, L. 1965.

Amendments

The 1961 amendment added the provisions that now constitute subsection (b) and (c) and the first sentence of subsection (d).

The 1965 amendment inserted letter designations for the subsections and added the second sentence of subsection (d).

Repealing Clause

Section 2 of Ch. 191, Laws 1961 repealed all acts and parts of acts in conflict therewith.

11-3524. (5520.84) Firemen's tenure—firemen's disability and pension funds—how continued—protection of rights in. Any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall have the same job tenure rights as though no such election and qualification had taken place. Any such fireman who has vested rights in any disability or pension fund shall maintain prior vested rights to such funds upon their transfer to a consolidated county municipality. Any disability or pension fund, or funds, of the fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act, shall be continued as one such fund for the fire department of the municipality, subject, however, to the prior vested rights of any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act. The board of trustees of such disability or pension fund shall consist of the president, the director of finance, the director of law, the director of the fire department, and one member of the fire department selected by a majority of the members of such department between the first and tenth day of July of each year in which the municipality shall elect members of the commission. Except as provided in this section, the disability or pension fund of the fire department shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

History: En. Sec. 83, Ch. 121, L. 1923; amd. Sec. 1, Ch. 192, L. 1961.

Amendment

The 1961 amendment inserted two new sentences at the beginning of the section; substituted "disability or pension fund" for "disability fund" in each of the last three

sentences; and added to the present third sentence the words "subject, however, to the prior vested rights of any firemen employed by any fire department or departments, established as required by law in any city or town of the county prior to the election and qualification of a commission under this act."

CHAPTER 37—OFF-STREET PARKING FACILITIES

Section 11-3714. Indenture for security of bonds.

11-3721. Funding or refunding bonds—negotiability.

11-3714. Indenture for security of bonds. The commission may enter into indentures providing for the aggregate principal amount, date, or dates, maturities, interest rate, denominations, form, registration, transfer and interchange of such bonds and coupons, and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. Reference on the face of the bonds to such indenture by its date of adoption, or the apparent date on the face thereof, is sufficient to incorporate all of the provisions thereof into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or

detached from the bonds, has recourse to and is bound by all of the provisions of the indenture, to the extent that such provisions do not conflict with provisions stated in the bonds. An indenture pursuant to which bonds are issued may include such covenants and agreements on the part of the commission as the commission deems necessary or advisable for the better security of the bonds issued thereunder. An indenture may include any, or one, or all the following clauses relating to the bonds issued thereunder: Requiring the commission to pay or cause to be paid punctually the principal of all such bonds and the interest thereon on the date or dates at the place or places, and in the manner mentioned in such bonds and in the coupons appertaining thereto in accordance with such indenture; requiring the commission to make all repairs, renewals and replacements necessary to the operation of the project and to keep it at all times in good repair; requiring the commission to preserve and protect the security of the bonds and the rights of the holders thereof and to warrant and defend such rights; requiring the commission to pay and discharge or cause to be paid and discharged from the funds available for that purpose all lawful claims for labor, materials and supplies or other charges which, if unpaid, might become a lien or charge upon the revenues, or any part thereof, of any project acquired, constructed or completed from the proceeds of the sale of the bonds or from other proceeds or upon any of the physical properties thereof which might impair the security of the bonds; which limits, restricts, or prohibits any right, power or privilege of the commission to mortgage or otherwise encumber, sell, lease or dispose of any project constructed from the proceeds of the bonds or from other proceeds, or to enter into any lease or agreement which impairs or impedes the operation of such project, or any part thereof, necessary to secure adequate revenues or which otherwise impairs or impedes the rights of the holders of the bonds with respect to such revenues.

Requiring the commission to fix, prescribe and collect fees, tolls, rentals or other charges in connection with the services and facilities furnished from the project acquired, constructed or purchased from part or all of the proceeds of the bonds or from other proceeds, sufficient to pay the principal of and interest on the bonds as they become due and payable, together with all expenses of operation, maintenance and repair of the project, and with such additional sums as may be required for any sinking fund, reserve fund or other special fund provided for the further security of such bonds or as a depreciation charge or other charge in connection with such project; requiring the commission to hold in trust the revenues pledged to the payment of such bonds and the interest thereon, or to any reserve or other fund created for the further protection of the bonds, and to apply such revenues or cause them to be applied only as provided in the indenture.

Limiting the power of the commission to apply the proceeds of the sale of any issue of bonds for the acquiring, constructing, or completing of any project or any part thereof, or more than one of such projects; limiting the power of the commission to issue additional revenue bonds for the purpose of acquiring, constructing or completing any improvement

or any part thereof; requiring, specifying or limiting the kind, amount and character of insurance to be maintained by the commission on any project, or any part thereof, and the use and disposition of the proceeds of any such insurance thereafter collected; providing the events of default, and the terms and conditions upon which any or all of the bonds then or thereafter issued may become or be declared due and payable prior to maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

Designating the rights, limitations, powers and duties arising upon breach by the commission of any of the covenants, conditions, or obligations contained in any indenture; prescribing a procedure by which certain specified terms and conditions of the indenture may be subsequently amended or modified with the consent of the commission and the vote or written assent of the holders of a specified principal amount of the bonds issued and outstanding. Such clause may provide for meetings of bondholders and for the manner in which the consent of the bondholders may be given. The clause shall specifically state the effect of such amendment or modification upon the rights of the holders of all of the bonds and interest coupons appertaining thereto, whether attached thereto or detached therefrom.

With respect to any clause providing for the modification or amendment of an indenture, the commission may agree that bonds held by the commission, by any department, political subdivision or agency of the state of Montana, or by any public corporation, municipality, district or political subdivision shall not be counted as outstanding bonds, or be entitled to vote or assent but shall nevertheless, be subject to any such modification or amendment. [Effective January 1, 1965.]

History: En. Sec. 14, Ch. 223, L. 1951; amd. Sec. 11-107, Ch. 264, L. 1963.

Amendment

The 1963 amendment added "to the extent that such provisions do not con-

flict with provisions stated in the bonds" to the third sentence in the first paragraph; and made a minor change in phraseology.

11-3721. Funding or refunding bonds—negotiability. Funding or refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds to be funded or refunded thereby, and in addition for the payment of all expenses incident to the calling, retiring or paying of such outstanding bonds, and the issuance of such funding or refunding bonds. These expenses include the difference in amount between the par value of the funding or refunding bonds and any amount less than par for which the funding or refunding bonds are sold, any amount necessary to be made available for the payment of interest upon such funding or refunding bonds from the date of sale thereof to date of payment of the bonds to be funded or refunded or to the date upon which the bonds to be funded or refunded will be paid pursuant to the call thereof or agreement with the holders thereof, and the premium, if any, necessary to be paid in order to call or retire the outstanding bonds and the interest accruing thereon to the date of the call or retirement. All bonds issued under the provisions of this act shall be fully negotiable,

as provided by the Uniform Commercial Code—Investment Securities. [Effective January 1, 1965.]

History: En. Sec. 21, Ch. 223, L. 1951; amd. Sec. 11-108, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "shall be fully negotiable, as provided by the

Uniform Commercial Code—Investment Securities" at the end of the section for "are negotiable instruments, except when registered in the name of a registered owner."

CHAPTER 38—CITY OR CITY-COUNTY PLANNING BOARDS

- Section 11-3801. City planning boards or city-county planning boards authorized—purpose of act.
- 11-3803. Definitions.
 - 11-3804. City planning board.
 - 11-3808. Citizen members—qualifications.
 - 11-3810. City-county planning boards—members—term of officer members and citizen members.
 - 11-3812. Citizen members of city-county board—qualifications.
 - 11-3813. Removal of citizen appointee.
 - 11-3818. Quorum—official action.
 - 11-3820. Expenses while attending conferences in another city, county, or state.
 - 11-3824. Powers and duties.
 - 11-3825. Funds for operation—tax levy authority.
 - 11-3827. Power to accept and use gifts and donations—special nonreverting fund—federal and state aid.
 - 11-3828. Master plan—policies.
 - 11-3830. Jurisdictional area.
 - 11-3830.1. Planning projects outside jurisdictional area—broad construction.
 - 11-3831. Master plan—contents.
 - 11-3833. Notice of hearing prior to adoption of master plan.
 - 11-3834. Resolution adopting master plan and recommending ordinance.
 - 11-3840. Adoption of master plan—policy and pattern of development.
 - 11-3842. Plats of subdivisions—approval by planning board.
 - 11-3843. Application for approval of plat.
 - 11-3844. Determination of whether application for approval should be granted.
 - 11-3845. Regulations governing procedure for application or approval of plats.
 - 11-3846. Approval or disapproval of application for plat.
 - 11-3847. Fees.
 - 11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by city council.
 - 11-3851. Appeals.
 - 11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources.
 - 11-3855. Validation of prior zoning ordinances, rules and regulations.

11-3801. City planning boards or city-county planning boards authorized—purpose of act. The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly may create a planning board in order to promote the orderly development of its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the com-

munity be commensurate with and promotive of the efficient and economical use of public funds.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials.

History: En. Sec. 1, Ch. 246, L. 1957; amd. Sec. 1, Ch. 247, L. 1963.

regulatory powers be created over developments affecting the public welfare and not now otherwise controlled, and that additional powers be granted legislative bodies of cities and counties to carry out the purposes of this act."

Amendment

The 1963 amendment deleted from the end of the second paragraph a clause reading, "and in addition, that certain

DECISIONS UNDER FORMER LAW

Partial Invalidity

The former provision in this section "that additional powers be granted legislative bodies of cities and counties" was invalid, in so far as it applied to counties, as an un-

constitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

11-3803. Definitions. As used in this act:

1 to 3. * * * [Same as parent volume.]

4. "Master plan" means a comprehensive development plan or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and other related matters. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body.

5 to 9. * * * [Same as parent volume.]

10. "Person" means individual firm, or corporation.

11. "Governing body or governing bodies" means the governing body of any governmental unit represented on a planning board.

12. "Plat" means a subdivision of land into lots, streets and areas, marked upon the earth and represented on paper; and includes re-plats or amended plats.

History: En. Sec. 3, Ch. 246, L. 1957; amd. Sec. 2, Ch. 247, L. 1963.

paragraph 4 for a clause reading, "and including such ordinances, laws, or resolutions as may be deemed necessary to implement such complete master plan or parts thereof by legislative approval and provision for such regulations as are deemed necessary and their enforcement"; deleted a comma between "individual" and "firm" in paragraph 10; and added paragraph 12.

Amendment

The 1963 amendment substituted "comprehensive development plan" near the beginning of paragraph 4 for "complete master plan"; substituted "a plan" before "of land use" in paragraph 4 for "master plan"; substituted the second sentence of

11-3804. City planning board. A city planning board shall consist of not less than seven (7) members to be appointed as follows:

a. One (1) member to be appointed by the city council from its membership;

b. One (1) member to be appointed by the city council who may in the discretion of the city council be an employee or hold public office in the city or county in which the city is located;

c. One (1) member to be appointed by the mayor upon the designation by the county commissioners of the county in which the city is located;

d. Four (4) citizen members to be appointed by the mayor, two (2) of whom shall be resident freeholders within the urban area, if any, outside of the city limits over which the planning board has jurisdiction under this act and two (2) of whom shall be resident freeholders within the city limits. Such citizen members shall hold no other office in the city government.

History: En. Sec. 4, Ch. 246, L. 1957; amd. Sec. 1, Ch. 271, L. 1959.

Amendment

The 1959 amendment, in subd. d., substituted the words "of whom shall be

resident freeholders within the urban area" for "members of which shall be residents of the urban area"; added the clause pertaining to resident freeholders within the city; and added the final sentence.

11-3808. Citizen members—qualifications. The citizen members shall be qualified by knowledge and experience in matters pertaining to the development of the city and shall hold no other office in the city government and shall be resident freeholders of such city or jurisdictional area as defined in section 11-3830, R.C.M. 1947.

History: En. Sec. 8, Ch. 246, L. 1957; amd. Sec. 3, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "resident freeholders of such city or jurisdictional area as defined in section 11-3830, R.C.M. 1947" at the end of the section for "residents of such city or the urban area outside of the city limits over which the planning board has jurisdiction under this act."

tional area as defined in section 11-3830, R.C.M. 1947" at the end of the section for "residents of such city or the urban area outside of the city limits over which the planning board has jurisdiction under this act."

11-3809. Repealed.

Repeal

This section (Sec. 9, Ch. 246, L. 1957), relating to the terms of citizen members

of the board, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3810. City-county planning boards—members—term of officer members and citizen members. 1. A city-county planning board shall consist of not less than nine (9) members to be appointed as follows:

a. Two (2) official members to be appointed by the board of county commissioners who may in the discretion of the board of county commissioners be employed by or hold public office in the county.

b. Two (2) official members to be appointed by the city council who may in the discretion of the city council be employed by or hold public office in the city.

c. Two (2) citizen members to be appointed by the mayor of the city.

d. Two (2) citizen members to be appointed by the board of county commissioners. The two (2) members may reside outside the city limits but within the jurisdictional area of the planning board.

e. The ninth member shall be selected by the eight (8) officers and citizen members hereinabove provided for with the consent and approval of the board of county commissioners and the city council.

2. The terms of the members who are officers of any governmental unit represented on the board shall be coextensive with their respective

terms of office to which they have been elected or appointed; the terms of the other members shall be two (2) years, except that the terms of the first members appointed shall be fixed by agreement and rule of the governing bodies represented on the board for one (1) or two (2) years in order that a minimum number of terms shall expire in any year.

History: En. Sec. 10, Ch. 246, L. 1957; amd. Sec. 4, Ch. 247, L. 1963; amd. Sec. 1, Ch. 189, L. 1965.

Amendments

The 1963 amendment inserted the numerical designations for the two subsections; added the second sentence to paragraph 1 d; reduced the terms of non-governmental members, as specified in subsection 2, from four to two years; substituted "one (1) or two (2) years" in the latter part of subsection 2 for "one

(1) to four (4) years"; and made minor changes in phraseology.

The 1965 amendment reduced the number of citizen members specified in paragraph 1 d from three to two; substituted "may reside" for "must reside" in the second sentence of paragraph 1 d; and added paragraph 1 e.

Repealing Clause

Section 2 of Ch. 189, Laws 1965 repealed all acts and parts of acts in conflict therewith.

11-3812. Citizen members of city-county board—qualifications. The citizen members of the city-county planning board shall be resident freeholders in the area over which the planning board has jurisdiction, provided, however, that at least two (2) of such members shall be resident freeholders in the area, if any, outside the city limits over which the planning board has jurisdiction.

History: En. Sec. 12, Ch. 246, L. 1957; amd. Sec. 2, Ch. 271, L. 1959.

Compiler's Note

The beginning of the amending section correctly identified this section as the one to be amended; however, in setting out the section as amended there was an obvious

clerical error as it was set out as "11-3182." The reference should have read "11-3812."

Amendment

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

11-3813. Removal of citizen appointee. Any citizen appointee may be removed from office by a majority vote of the governing body of the governmental unit represented by such appointee.

History: En. Sec. 13, Ch. 246, L. 1957; amd. Sec. 5, Ch. 247, L. 1963.

Amendment

The 1963 amendment deleted a first paragraph, for text of which see parent volume; and made a minor change in phraseology.

11-3818. Quorum—official action. A majority of members shall constitute a quorum; no action of the planning board is official, however, unless authorized by a majority of members of the board at a regular or properly called special meeting.

History: En. Sec. 18, Ch. 246, L. 1957; amd. Sec. 6, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted "of members" after "majority" in the latter part of the section.

11-3820. Expenses while attending conferences in another city, county, or state. When the planning board determines that it is necessary for members or employees to attend, in another city, county or state a regional or national conference or interview dealing with planning or related problems, the planning board may pay the actual expenses of the attending

members or employee provided the amount has been made available in the board's appropriation.

History: En. Sec. 20, Ch. 246, L. 1957;
amd. Sec. 7, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "planning board" for "commission" in the latter part of the section.

11-3824. Powers and duties. To effectuate the purpose of this act, the board shall have the power and duty to:

1 to 5. * * * [Same as parent volume.]

6. Make recommendations and an annual report to any governing bodies represented on the board concerning the operation of the board and the status of planning within its jurisdiction.

7. Prepare, publish, and distribute reports, proposed ordinances and proposed resolutions and other material relating to the activities authorized under this act.

8. Prepare and submit to the governing bodies represented on the board an annual budget in the same manner as other departments of the city and county governments and shall be limited in all expenditures to the provisions made therefor by the governing bodies represented upon the board.

History: En. Sec. 24, Ch. 246, L. 1957;
amd. Sec. 8, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "any governing bodies" in paragraph 6 for "the mayor and city council and the board of county commissioners of any govern-

mental units"; inserted "proposed" before "ordinances" in paragraph 7; inserted "and proposed resolutions" after "ordinances" in paragraph 7; deleted former paragraphs 8, 9, 10, and 12, for text of which see parent volume; and redesignated former paragraph 11 as 8.

11-3825. Funds for operation—tax levy authority. 1. After a city council has by ordinance or a city council and board of county commissioners have, by ordinance and resolution, created a planning board, the governing bodies represented upon such board may appropriate funds to carry out the duties of the planning board.

2. When a planning board has been created by agreement of more than one (1) governmental unit, the governing bodies of the governmental units which have created the board shall agree upon the proportion of expenditures to be borne by each such unit and may budget and appropriate the funds necessary for the respective shares thus agreed upon.

3. The governing body of any city or town represented upon a planning board may levy a tax upon the property located within such city or town not to exceed one (1) mill for planning board purposes, under procedures set forth in Title 11, Chapter 14, R.C.M. 1947.

4. When a city-county planning board has been established, the board of county commissioners may create a planning district which shall include that property within the jurisdictional area as established pursuant to section 11-3830, which lies outside the limits of any incorporated cities and towns; and the board of county commissioners may levy on all property located within such planning district a tax not to exceed one (1)

mill for planning board purposes, under procedures set forth in Title 16, Chapter 19, R.C.M. 1947.

History: En. Sec. 25, Ch. 246, L. 1957; amd. Sec. 9, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted numerical designations for the four subsections; substituted "may" for "shall" before "budget and appropriate" in the latter part of subsection 2; increased the tax levies authorized by subsections 3 and 4 from one-half mill to one mill; added "under procedures set forth in Title 11, Chapter 14, R.C.M. 1947" at the end of

subsection 3; substituted "planning district" for "planning and zoning district" in the early part of subsection 4; substituted "that property within the jurisdictional area as established pursuant to section 11-3830" in subsection 4 for "only that property within the limits of a master plan or proposed master plan as defined in section 11-3830"; and added "under procedures set forth in Title 16, Chapter 19, R.C.M. 1947" at the end of subsection 4.

11-3827. Power to accept and use gifts and donations—special non-reverting fund—federal and state aid. A city, county or city-county planning board organized pursuant to the provisions of this title, is hereby empowered and given the right to accept, receive, take, hold, own and possess any gift, donation, grant, devise or bequest, or any property, real, personal or mixed, or any improved or unimproved park or playground, and utilize, hold, or dispose of the same for planning purposes, not inconsistent with the provisions of this act. Any moneys so accepted shall be deposited with the city or county in a special nonreverting planning board fund to be available for expenditures by the planning board for the purpose designated by the donor. The disbursing officer of a city or county shall draw warrants against such special nonreverting fund only upon vouchers signed by the president and secretary of the planning board. Upon approval of the governing bodies represented on the board, a planning board may accept, receive, and expend funds, grants, and services from the federal government or its agencies and instrumentalities of state or local government, or its agencies and instrumentalities of state or local government, or from civic sources and contract with respect thereto, and provide such information and reports as may be necessary to secure such financial aid.

History: En. Sec. 27, Ch. 246, L. 1957; amd. Sec. 1, Ch. 133, L. 1965.

Amendment

The 1965 amendment substituted the first sentence for a sentence reading, "A

city or county may accept gifts and donations for planning board purposes"; and inserted "or its agencies and instrumentalities of state or local government" before "or from civic sources" in the final sentence.

11-3828. Master plan—policies. 1. To assure the promotion of public health, safety, morals, convenience, order, or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a master plan and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

2. The planning board may also propose policies for:

- a. subdivision plats
- b. the development of public ways, public places, public structures, and public and private utilities.

c. the issuance of improvement location permits on platted and unplatted lands.

d. the laying out and development of public ways and services to platted and unplatted lands.

3. The city council may in its discretion require the city-county planning board to function as the zoning commission authorized under section 11-2706, R.C.M. 1947.

4. The governing bodies of the city or county shall give consideration to recommendations of the city-county planning board but the governing bodies shall not be bound by such recommendations.

History: En. Sec. 28, Ch. 246, L. 1957; amd. Sec. 10, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted numerical designations for the subsections; inserted "community" before "development" in subsection 1; substituted the words "and shall serve in an advisory capacity to the local governing bodies establishing the planning board" at the end of subsection 1 for sentences reading, "Upon the creation of a planning board under the terms of this act and before such time as a master plan has been adopted, as provided in this act, a planning board so created shall serve in an advisory capacity to the local governing bodies establishing a plan-

ning board and shall consider and make recommendations to the city or cities or county on all subdivision and convenience plats presented to the city council or board of county commissioners prior to the subdivision or convenience plat receiving final approval for filing by the proper local governmental authority. The city or county shall not be bound by the recommendation but shall give consideration to the recommendations so made"; substituted the preliminary clause of subsection 2 for "It may also formulate policies for:"; inserted clause a in subsection 2; redesignated former clauses 1, 2, and 3 as clauses b, c, and d of subsection 2; made minor changes in phraseology; and added subsections 3 and 4.

11-3830. Jurisdictional area. 1. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the city. The jurisdictional area shall not extend more than four and one-half ($4\frac{1}{2}$) miles beyond the limits of any city within the jurisdictional area.

2. The planning board, after approval of the jurisdictional area by the governing bodies, shall file in the office of the clerk and recorder a map showing the boundaries of the jurisdictional area. The boundaries may be revised from time to time by resolutions of the governing bodies. Such revised boundaries shall be shown upon a map which shall be filed as provided in this section. The area included in such map shall constitute the area over which the planning board shall have advisory jurisdiction.

3. In case an unincorporated area is within the potential jurisdiction of more than one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies, and a map showing the boundary lines so agreed upon and approved shall be filed as provided in this section, and thereafter shall fix the limit of territorial jurisdiction of the respective planning boards.

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963.

Amendments

The 1959 amendment completely rewrote the section to read as follows: "The planning board shall prepare and adopt a master plan for the development of the city wherein it was created and such contiguous unincorporated area outside the city as, in the judgment of the planning board, bears reasonable relation to the development of the city. Before exercising any authority or jurisdiction over such unincorporated area, the planning board, after approval by the board of county commissioners, shall file in the office of the clerk and recorder a map or plat showing the boundaries of such unincorporated area. With the approval of the board of county commissioners, such boundaries may be revised from time to time by the planning board. Such revised boundaries shall be shown upon a map or plat which shall be filed as above provided. The area included in such map or plat shall constitute the area over which the planning board shall have jurisdiction.

In case an unincorporated area is within the potential jurisdiction of more than

one planning board, then the boundary between the conflicting areas shall be determined by agreement between the planning boards involved, with the approval of their respective governing bodies, and a map or plat showing the boundary lines so agreed upon and approved shall be filed as a part of any master plan or plans, and thereafter shall fix the limit of territorial jurisdiction with respect to decisions, orders or other actions to be made or taken by the respective planning boards or the governing bodies of cities or counties involved under the authority of this act; provided, however, that in the case of counties not exceeding twenty thousand (20,000) in population, the jurisdictional limits of the city-county planning board shall not extend more than six (6) miles from the limits of any class of city or town, incorporated or unincorporated, within such county, and in counties exceeding twenty thousand (20,000) population said limits shall not extend beyond twelve (12) miles from the limits of any city or town, incorporated or unincorporated, within such county."

The 1963 amendment again completely rewrote the section and divided it into numbered subsections.

DECISIONS UNDER FORMER LAW

Partial Invalidity

The former provisions empowering city-county planning boards to develop and exercise complete discretion in developing master plans for contiguous unincorporated areas surrounding cities within a

radius of twelve miles of such cities were invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

11-3830.1. Planning projects outside jurisdictional area—broad construction. Any city-county planning board organized pursuant to the provisions of Title 11, chapter 38, R. C. M. 1947, is hereby empowered, if requested by the board of county commissioners, to conduct specific planning projects within the county, and outside of the jurisdictional area of said city-county planning board as defined in section 11-3830, R. C. M. 1947. Such authority to conduct specific planning projects outside of the jurisdictional area of the city-county planning board upon request of the board of county commissioners shall be broadly construed so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

History: En. Sec. 1, Ch. 190, L. 1965.

Title of Act

An act to authorize duly constituted city-county planning board to conduct specific planning projects outside of the jurisdictional area of said planning board, if requested by the board of county com-

missioners, and to construe said power broadly so as to enable the county to qualify under the provisions of and regulations governing any planning assistance program administered by any agency of the United States of America or the state of Montana.

11-3831. **Master plan—contents.** The planning board shall prepare and propose a master plan for the jurisdictional area, which plan may include;

1. Careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county.

2. Maps, plats, charts, and descriptive material presenting basic information, locations, extent and character of any of the following:

a. History, population, and physical site conditions;
b. Land use, including the height, area, bulk, location and use of private and public structures and premises;

c. Population densities;

d. Community centers and neighborhood units;

e. Blighted and slum areas;

f. Streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;

g. Sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;

h. Flood control and prevention;

i. Public and private utilities, including water, light, heat, communication, and other services;

j. Transportation, including rail, bus, truck, air, and water transport, and their terminal facilities;

k. Local mass transit, including motor and trolley bus, street, elevated or underground railways, and taxicabs;

l. Parks and recreation, including parks, playgrounds, reservations, forests, wild life refuges, and other public grounds, spaces, and facilities of a recreational nature;

m. Public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;

n. Education, including location and extent of schools, colleges, and universities;

o. Land utilization, including areas for manufacturing, and industrial uses, concentration of wholesale, retail business, and other commercial uses, residential, and areas for mixed uses;

p. Conservation of water, soil, agricultural, and mineral resources;

q. Any other factors which are a part of the physical, economic, or social situation within the city or county.

3. Reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in part 2 of this section so as to substantially accomplish the object of this legislation as set out in section 11-3801.

4. A long-range development program of public works' projects, based on the recommended plans of the planning board, for the purpose

of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment, and the keeping of such program up-to-date, for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds.

History: En. Sec. 31, Ch. 246, L. 1957;
amd. Sec. 12, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted the preliminary clause for "A master plan may include:".

11-3832. Repealed.

Repeal

This section (Sec. 32, Ch. 246, L. 1957), relating to amended or additional plans

for streets and highways, was repealed by Sec. 26, Ch. 247, Laws 1963.

11-3833. Notice of hearing prior to adoption of master plan. 1. Prior to the submission of the proposed master plan to the governing bodies, the board shall give notice and hold a public hearing on the plan.

2. At least ten (10) days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

History: En. Sec. 33, Ch. 246, L. 1957;
amd. Sec. 13, Ch. 247, L. 1963.

Amendment

The 1963 amendment divided the section into numbered subsections; substituted "submission of the proposed master plan to the governing bodies" in subsection 1 for "adoption of a master plan"; deleted from the end of subsection 1 the

words "and a proposed ordinance for its enforcement"; and substituted the words "jurisdictional area" in subsection 2 for "area over which the board has jurisdiction."

References

Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

11-3834. Resolution adopting master plan and recommending ordinance. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed master plan and any proposed ordinances and resolutions for its implementation to the governing bodies of the governmental units represented on the board.

History: En. Sec. 34, Ch. 246, L. 1957;
amd. Sec. 14, Ch. 247, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

11-3835 to 11-3839. Repealed.

Repeal

These sections (Secs. 35 to 39, Ch. 246, L. 1957), relating to adoption of master plans by planning boards, action thereon

by governing bodies, and amendments subsequent to adoption, were repealed by Sec. 26, Ch. 247, Laws 1963.

11-3840. Adoption of master plan—policy and pattern of development. The governing bodies shall adopt, revise or reject such proposed plan or any of its parts. After adoption of the master plan the city council, the board of county commissioners, or other governing body within the territorial jurisdiction of the board shall be guided by and give considera-

tion to the general policy and pattern of development set out in the master plan in the:

1. Authorization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;
2. Authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;
3. Adoption of subdivision controls;
4. Adoption of zoning ordinances or resolutions.

History: En. Sec. 40, Ch. 246, L. 1957;
amd. Sec. 15, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted the first sentence and added clauses 3 and 4.

11-3841. Repealed.

Repeal

This section (Sec. 41, Ch. 246, L. 1957), relating to the control over plats, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3842. Plats of subdivisions—approval by planning board. 1. Where a master plan has been approved, the city council may by ordinance require subdivision plats to conform to the provisions of the master plan. Certified copies of such ordinance shall be filed with the city or town clerk and with the county clerk and recorder of the county.

2. Thereafter a plat involving lands within the corporate limits of the city and covered by said master plan shall not be filed without first presenting it to the planning board which shall make a report to the city council advising as to compliance or noncompliance of the plat with the master plan. The city council shall have the final authority to approve the filing of such plat.

3. Nothing herein contained shall be interpreted to limit the present powers of the city or county governments, but shall be an additional requirement before any plat may be filed of record or entitled to be recorded.

History: En. Sec. 42, Ch. 246, L. 1957;
amd. Sec. 4, Ch. 271, L. 1959; amd. Sec.
16, Ch. 247, L. 1963.

compliance with the master plan has first been approved and endorsed upon the plat by the planning board having jurisdiction over the area"; and added a second paragraph which, as amended in 1963, now constitutes subsection 3.

The 1963 amendment substituted new subsections 1 and 2 for the former first paragraph; designated the paragraph added by the 1959 amendment as subsection 3; substituted "limit" for "usurp" in the first part of subsection 3; and substituted "be" for "add" before "an additional requirement" in subsection 3.

Amendments

The 1959 amendment revised the original text to read as follows: "After a master plan and an ordinance, containing provisions for subdivision control and the approval of plats and re-plats, have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, a plat of a subdivision shall not be filed with the county clerk and recorder or the city or town clerk unless

11-3843. Application for approval of plat. 1. A person desiring the approval of a plat involving lands within the corporate limits of the city and covered by said master plan shall submit a written application for a certificate together with a copy of the proposed plat to the planning board having jurisdiction.

2. When the board tentatively finds that the application conforms to the requirements of the master plan or subdivision ordinance, it shall set

a date for a hearing, notify the applicant in writing, and notify by general publication or otherwise any person or governmental unit having a probable interest in the proposed plat.

History: En. Sec. 43, Ch. 246, L. 1957; amd. Sec. 17, Ch. 247, L. 1963.

Amendment

The 1963 amendment divided the section into numbered subsections; inserted "involving lands within the corporate limits of the city and covered by said

master plan" in subsection 1; and substituted "When the board tentatively finds that the application conforms to the requirements of the master plan or subdivision ordinance, it" at the beginning of subsection 2 for "Upon receipt of the application, the board, if it tentatively approves the application."

11-3844. Determination of whether application for approval should be granted. In determining whether an application for approval shall be recommended, the board shall determine if the plat provides for:

1. Coordination of subdivision streets with existing and planned streets or highways.
2. Coordination with an extension of facilities included in the master plan.
3. Establishment of minimum width, depth, and area of lots within the projected subdivision.
4. Fair allocations of areas for streets, parks, and utilities.

History: En. Sec. 44, Ch. 246, L. 1957; amd. Sec. 18, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "recommended" for "granted" in the preliminary clause.

11-3845. Regulations governing procedure for application or approval of plats. The planning board shall adopt and publish written regulations governing the procedure for application for approval of plats of the lands within its advisory jurisdiction.

History: En. Sec. 45, Ch. 246, L. 1957; amd. Sec. 19, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "for" for "or" after "application"; and inserted "advisory" before "jurisdiction."

11-3846. Approval or disapproval of application for plat. After hearing and within forty-five (45) days after application for approval of the plat, the board shall recommend approval or disapproval to the city council. If the board recommends disapproval, it shall set forth its reasons in a communication to the city council and provide the applicant with a copy.

History: En. Sec. 46, Ch. 246, L. 1957; amd. Sec. 20, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "recommend approval or disapproval to the city council" at the end of the first sentence for "approve or disapprove it"; deleted a second sentence reading, "If the

board approves, it shall affix the commission's seal upon the plat"; substituted "If the board recommends disapproval" at the beginning of the present second sentence for "If it disapproves"; and substituted "in a communication to the city council" in the present second sentence for "in its own records."

11-3847. Fees. The city council shall establish a uniform schedule of fees proportioned to the cost of checking and verifying the proposed plats. An applicant shall pay the specified fee at the time of filing his

application. These fees shall be credited to a fund established by the governing bodies for the planning board.

History: En. Sec. 47, Ch. 246, L. 1957;
amd. Sec. 21, Ch. 247, L. 1963.

Amendment

The 1963 amendment substituted "The city council shall" for "The board may" at the beginning of the section; and added the third sentence.

11-3848. Filing and recording of plat involving lands covered by master plan and ordinance without effect unless approved by city council. After a master plan and an ordinance containing provisions for subdivision control and the approval of plats have been adopted and a certified copy of the ordinance has been filed with the county clerk and recorder, the filing and recording of a plat involving lands within the corporate limits of the city and covered by such master plan and ordinance shall be without legal effect unless approved by the city council.

History: En. Sec. 48, Ch. 246, L. 1957;
amd. Sec. 22, Ch. 247, L. 1963.

Amendment

The 1963 amendment deleted "and re-plats" following "approval of plats"; inserted "within the corporate limits of the city and" in the latter part of the section; and substituted "city council" for "board" at the end of the section.

11-3849. Repealed.

Repeal

This section (Sec. 49, Ch. 246, L. 1957), relating to the requirement of structures

conforming to the master plan and ordinance, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3850. Repealed.

Repeal

This section (Sec. 50, Ch. 246, L. 1957), relating to the issuance of improvement

location permits, was repealed by Sec. 8, Ch. 271, Laws 1959.

11-3851. Appeals. A decision of a city council rejecting a proposed subdivision plat may be reviewed by the district court upon application for a writ of certiorari. The application shall specify the grounds upon which it alleges the illegality of the action of the city council.

History: En. Sec. 51, Ch. 246, L. 1957;
amd. Sec. 23, Ch. 247, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

11-3852. Repealed.

Repeal

This section (Sec. 52, Ch. 246, L. 1957; Sec. 5, Ch. 271, L. 1959), granting zoning powers to city councils and boards of county commissioners, was repealed by Sec. 12, Ch. 246, Laws 1963.

Partial Invalidity

The provisions of this section authorizing county commissioners to exercise building and zoning regulatory powers were invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.* 139 M 263, 362 P 2d 1021, 1025.

11-3853. Act not to prevent recovery and use of mineral or forest or agricultural resources. Nothing in this act shall be deemed to author-

ize an ordinance, resolution, rule, or regulation which would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: En. Sec. 53, Ch. 246, L. 1957; amd. Sec. 6, Ch. 271, L. 1959.

Amendment

The 1959 amendment substituted the word "resolution" for "law" and substituted the last part of the section, beginning with "development," for "develop-

ment, recovery, and sale of any mineral resources or forests by the owner thereof, or the construction of buildings, railroads, or other structures or equipment necessary to the full use, development, recovery, and sale of mineral or forest resources."

11-3854. Repealed.

Repeal

This section (Sec. 54, Ch. 246, L. 1957; Sec. 7, Ch. 271, L. 1959), granting zoning commission powers to planning boards, was repealed by Sec. 12, Ch. 246, Laws 1963, and by Sec. 26, Ch. 247, Laws 1963.

Partial Invalidity

The provisions of this section authorizing county commissioners to exercise zoning regulatory powers were invalid as an unconstitutional attempt to delegate legislative powers to counties in violation of Article IV, sec. 1 of Montana Constitution. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

11-3855. Validation of prior zoning ordinances, rules and regulations. All zoning ordinances or resolutions and rules and regulations and all amendments, supplements, and changes thereto legally adopted under any prior enabling act and all actions taken under the authority of any such ordinances or resolutions, are hereby validated and continued in effect, until amended or repealed by action of the governing bodies taken under the authority of this act.

History: En. Sec. 55, Ch. 246, L. 1957; amd. Sec. 24, Ch. 247, L. 1963.

Amendment

The 1963 amendment inserted "or resolutions" after "ordinances" in two places; substituted "governing bodies" for "city council of such city" near the end of the section; and deleted a second sentence which read, "These ordinances shall have the same effect as though previously adopted as a master plan of land use or parts thereof."

Saving Clause

Section 25 of Ch. 247, Laws 1963 read "Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Repealing Clause

Section 26 of Ch. 247, Laws 1963 read "Section 11-3832, 11-3835, 11-3836, 11-3837, 11-3838, 11-3839, 11-3854, 11-3856, 11-3857, and 11-3858, R.C.M. 1947 are repealed."

11-3856 to 11-3858. Repealed.

Repeal

These sections (Secs. 56 to 58, Ch. 246, L. 1957), relating to enforcement of zon-

ing ordinances and to the termination of zoning district provisions, were repealed by Sec. 26, Ch. 247, Laws 1963.

CHAPTER 39—URBAN RENEWAL LAW

- Section 11-3901.** Definitions.
11-3902. Findings and declarations of necessity.
11-3903. Encouragement of private enterprise.
11-3904. Workable program.
11-3905. Finding of necessity by local governing body.
11-3906. Preparation and approval of urban renewal projects and urban renewal plans.

- 11-3907. Powers.
- 11-3908. Eminent domain.
- 11-3909. Disposal of property in urban renewal area.
- 11-3910. Issuance of bonds.
- 11-3911. Bonds as legal investments.
- 11-3912. Property exempt from taxes and from levy and sale by virtue of an execution.
- 11-3913. Cooperation by public bodies.
- 11-3914. Title of purchaser.
- 11-3915. Exercise of powers in carrying out urban renewal project.
- 11-3916. Urban renewal agency.
- 11-3917. Prohibition against discrimination.
- 11-3918. Interested public officials, commissioners, or employees.
- 11-3919. Separability—act controlling.
- 11-3920. Short title.

11-3901. **Definitions.** The following terms wherever used or referred to in this act, shall have the following meanings, unless a different meaning clearly indicated by the context:

(a) "Agency" or "urban renewal agency" shall mean a public agency created by section 16 [11-3916] of this act.

(b) "Blighted area" shall mean an area which, by reason of the substantial physical dilapidation, deterioration, defective construction, material, and arrangement and/or age obsolescence of buildings or improvements, whether residential or non-residential, inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality; inappropriate or mixed uses of land or buildings; high density of population and overcrowding; defective or inadequate street layout; faulty lot layout in relation to size, adequacy, accessibility or usefulness; excessive land coverage; insanitary or unsafe conditions; deterioration of site; diversity of ownership; tax or special assessment delinquency exceeding the fair value of the land; defective or unusual conditions of title; improper subdivision or obsolete platting; or the existence of conditions which endanger life or property by fire or other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime; substantially impairs or arrests the sound growth of the city or its environs, retards the provision of housing accommodations or constitutes an economic or social liability, and/or is detrimental, or constitutes a menace, to the public health, safety, welfare, and morals in its present condition and use.

(c) "Bonds" shall mean any bonds, notes, or debentures (including refunding obligations) herein authorized to be issued.

(d) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(e) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(f) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(g) "Mayor" shall mean the chief executive of a city or town.

(h) "Municipality" shall mean any incorporated city or town in the state.

(i) "Obligee" shall include any bondholder, agent or trustees for any bondholders, or lessor demising to the municipality property used in connection with an urban renewal project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(j) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or school district; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(k) "Public body" shall mean the state or any municipality, township, board, commission, district, or any other subdivision or public body of the state.

(l) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(m) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(n) "Redevelopment" may include (1) acquisition of a blighted area or portion thereof; (2) demolition and removal of buildings and improvements; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this act in accordance with the urban renewal plan, and (4) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan.

(o) "Rehabilitation" may include the restoration and renewal of a blighted area or portion thereof, in accordance with an urban renewal plan, by (1) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements; (2) acquisition of real property and demolition or removal of buildings and improvements thereon where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this act; and (4) the disposition of any property acquired in such urban renewal area (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with such urban renewal plan.

(p) "Urban renewal area" means a blighted area which the local governing body designates as appropriate for an urban renewal project or projects.

(q) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan (1) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (2) shall be sufficiently complete to indicate such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(r) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight, and may involve redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan.

History: En. Sec. 1, Ch. 195, L. 1959.

Title of Act

An act to provide for the rehabilitation, redevelopment, and clearance of blighted areas in cities and towns in this state in accordance with urban renewal plans approved by the governing bodies thereof; to define the duties, liabilities, exemptions and powers of such cities and towns in undertaking such activities, including the power to acquire property through the exercise of the power of eminent domain or otherwise, to dispose of property subject to any restrictions deemed necessary to prevent the development or spread of

future deteriorated or blighted areas, to issue revenue bonds and other obligations, to levy taxes and assessments and to enter into agreements to secure federal aid and comply with conditions imposed in connection therewith; to provide for an urban renewal agency and its powers hereunder if a city or town determines it to be in the public interest; to authorize public bodies to furnish funds, services, facilities and property in aid of urban renewal projects hereunder, and to provide that properties while held by a public agency hereunder shall be exempt from taxation.

11-3902. Findings and declarations of necessity. It is hereby found and declared that blighted areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state exist in municipalities of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime and depreciation of property values, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of such areas is a matter of state policy and state concern in order that the state and its municipalities shall not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, are conducive to fires, are difficult to police and to provide police protection for, and, while contributing little to the tax income of the state and its municipalities, consume an excessive pro-

portion of its revenues because of the extra services required for police, fire, accident, hospitalization and other forms of public protection, services, and facilities.

It is further found and declared that certain of such areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this act, since the prevailing condition of decay may make impracticable the reclamation of the area by rehabilitation; that other areas or portions thereof may, through the means provided in this act, be susceptible of rehabilitation in such a manner that the conditions and evils hereinbefore enumerated may be eliminated, remedied or prevented; and that to the extent feasible salvable blighted areas should be rehabilitated through voluntary action and the regulatory process.

It is further found and declared that the powers conferred by this act are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

History: En. Sec. 2, Ch. 195, L. 1959.

11-3903. Encouragement of private enterprise. A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this act, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this act, including the formulation of a workable program, the approval of urban renewal plans (consistent with the comprehensive plan or parts thereof for the municipality), the exercise of its zoning powers, the enforcement of other laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

History: En. Sec. 3, Ch. 195, L. 1959.

11-3904. Workable program. A municipality for the purposes of this act may formulate a workable program for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, blighted areas, to encourage needed urban rehabilitation, to provide for the redevelopment of such areas, or to undertake such of the aforesaid activities, or other feasible municipal activities as may be suitably employed to achieve the objectives of such workable program. Such workable program may include, without limitation, provision for; the prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; the rehabilitation of blighted areas or portions thereof by replanning, removing congestion, providing parks, playgrounds and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and the clearance and redevelopment of blighted areas or portions thereof.

History: En. Sec. 4, Ch. 195, L. 1959.

11-3905. Finding of necessity by local governing body. No municipality shall exercise any of the powers hereafter conferred upon municipalities by this act until after its local governing body shall have adopted a resolution finding that: (1) one or more blighted areas exist in such municipality; and (2) the rehabilitation, redevelopment, or a combination thereof, of such area or areas is necessary in the interest of the public health, safety, morals, or welfare of the residents of such municipality.

History: En. Sec. 5, Ch. 195, L. 1959; amd. Sec. 1, Ch. 38, L. 1965.

urban renewal project had been approved by the taxpayers of such municipality at an election as provided in section 6, subsection (g) thereof."

Amendment

The 1965 amendment deleted a final clause reading, "and (3) that the proposed

11-3906. Preparation and approval of urban renewal projects and urban renewal plans. (a) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared. For this purpose and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (d) hereof.

(b) The municipality may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to the municipality. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts thereof for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within sixty (60) days after receipt of it. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said sixty (60) days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project plan prescribed by subsection (c) hereof.

(c) The local governing body shall hold a public hearing on an urban renewal plan after public notice thereof. Such notice shall be given by publication once each week for two consecutive weeks not less than ten (10) nor more than thirty (30) days prior to the date of the hearing in a newspaper having a general circulation in the urban renewal area of the

municipality and by mailing a notice of such hearing not less than ten (10) days prior to the date of the hearing to the persons whose names appear on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown on the tax roll. The notice shall describe the time, date, place, and purpose of the hearing, shall generally identify the urban renewal area affected, and shall outline the general scope of the urban renewal plan under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project if it finds that (1) a workable and feasible plan exists for making available adequate housing for the persons who may be displaced by the project; (2) the urban renewal plan conforms to the comprehensive plan or parts thereof for the municipality as a whole; (3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; and (4) that a sound and adequate financial program exists for the financing of said project.

Provided, that the local governing body must find the urban renewal project area to be blighted area as defined in section 1 (b) [11-3901] hereof.

(e) An urban renewal project plan may be modified at any time by the local governing body: Provided, that if modified after the lease or sale by the municipality of real property in the urban renewal project area, such modification shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest may be entitled to assert.

(f) Upon the approval of an urban renewal project by a municipality, the provisions of the urban renewal plan with respect to the future use and building requirements applicable to the property covered by said plan shall be controlling with respect thereto.

(g) Upon the approval of an urban renewal project by a municipality the plan shall be submitted to a vote of the taxpayers of such municipality and shall be approved by a majority of those taxpayers voting on such question. If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in section 11-3913, subsection (c), or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of Title 11, chapter 24, or of sections 11-2217 to 11-2221, inclusive, the question of approving the plan and issuing such bonds shall be submitted to a vote of the taxpayers of such municipality in accordance with the provisions of sections 11-2308 to 11-2310, inclusive, at the same election and shall be approved by a majority of those taxpayers voting on such question. Aiding in the planning, undertaking or carrying out of an urban renewal project approved in accordance with this section shall be deemed a single purpose for the issuance of general obligation bonds, and the proceeds of such bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality by section 11-3907 which are necessary

or proper to complete such project in accordance with the approved plan and any modification thereof duly adopted by the local governing body. Sections 11-2306 and 11-2307 shall not be applicable to the issuance of such bonds.

History: En. Sec. 6, Ch. 195, L. 1959;
amd. Sec. 2, Ch. 38, L. 1965.

Effective Date

Section 3 of Ch. 38, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

Amendment

The 1965 amendment substituted "on such question" for "in such election" at the end of the first sentence of subsection (g); and added the second, third, and fourth sentences to subsection (g).

11-3907. Powers. Every municipality shall have all the power necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act, and to disseminate blight clearance and urban renewal information.

(b) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets or roads in connection with an urban renewal project; to install, construct, and reconstruct, streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project, and to include in any contract let in connection with such a project, provisions to fulfill such of said conditions as it may deem reasonable and appropriate.

(c) Within the municipality, to enter upon any building or property in any urban renewal area, in order to make surveys and appraisals, provided that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise, any real property and such personal property as may be necessary for the administration of the provisions herein contained, together with any improvements thereon; to hold, improve, clear, or prepare for redevelopment any such property; to dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies shall restrict a municipality in the exercise of such functions with respect to an urban renewal project.

(d) To invest any urban renewal project funds held in reserves or sinking funds or any such funds which are not required for immediate disbursement, in property or securities in which mutual savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to section 10 [11-3910] of this act at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be cancelled.

(e) To borrow money and to apply for, and accept, advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this act, and to enter into and carry out contracts in connection therewith. A municipality may include in any application or contract for financial assistance with the federal government for an urban renewal project such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this act.

(f) Within the municipality, to make or have made all plans necessary to the carrying out of the purposes of this act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify, and amend such plans. Such plans may include, without limitation: (1) a comprehensive plan or parts thereof for the locality as a whole, (2) urban renewal plans, (3) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, (4) plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (5) appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects. The municipality is authorized to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of urban blight and to apply for, accept, and utilize grants of, funds from the federal government for such purposes.

(g) To prepare plans for the relocation of families displaced from an urban renewal area, and to make relocation payments and to coordinate public and private agencies in such relocation, including requesting such assistance for this purpose as is available from other private and governmental agencies, both for the municipality and other parties.

(h) To appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this act, and in accordance with state law; (1) levy taxes and assessments for such purposes; (2) acquire land by negotiation and/or eminent domain; (3) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; (4) plan or replan, zone or rezone any part of the municipality; (5) adopt annual budgets for the operation of an urban renewal agency, department, or offices

vested with urban renewal project powers under section 15 [11-3915] of this act; (6) enter into agreements with such agencies or departments (which agreements may extend over any period) respecting action to be taken by such municipality pursuant to any of the powers granted by this act.

(i) Within the municipality, to organize, coordinate, and direct the administration of the provisions of this act as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively.

(j) To exercise all or any part or combination of powers herein granted.

(k) Nothing in this act shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines or other public utility facilities excepting water and sewer lines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959.

11-3908. Eminent domain. A municipality shall have the right to acquire by condemnation, any interest in real property, which it may deem necessary for an urban renewal project under this act after the adoption by the local governing body of a resolution declaring that the acquisition of the real property described therein is necessary for such purpose. Condemnation for urban renewal of blighted areas is declared to be a public use, and property already devoted to any other public use or acquired by the owner or his predecessor in interest by eminent domain may be condemned for the purposes of this act.

The award of compensation for real property taken for such a project shall not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction, or proposed assembly, clearance, or reconstruction in the project area. No allowance shall be made for the improvements begun on real property after notice to the owner of such property of the institution of proceedings to condemn such property. Evidence shall be admissible bearing upon the insanitary, unsafe, or substandard condition of the premises, or the unlawful use thereof.

History: En. Sec. 8, Ch. 195, L. 1959.

11-3909. Disposal of property in urban renewal area. (a) A municipality may sell, lease, or otherwise transfer real property or any interest therein acquired by it for an urban renewal project, in an urban renewal area for residential, recreational, commercial, industrial, or other uses or for public use, and may enter into contracts with respect thereto, or may retain such property or interest only for parks and recreation, education, public transportation, public safety, health, highways, streets, and alleys,

administrative buildings, or civic centers, in accordance with the urban renewal project plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of blighted areas or otherwise to carry out the purposes of this act. Provided, that such sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban renewal plan by the local governing body. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin, within a reasonable time, any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, a municipality shall take into account, and give consideration to, the uses provided in such plan; the restrictions upon, and the covenants, conditions, and obligations assumed by, the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any and all improvements which he has obligated himself to construct thereon. Real property acquired by a municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible, in the public interest, consistent with the carrying out of the provisions of the urban renewal plan. The inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions (including the incorporation by reference therein of the provisions of an urban renewal plan or any part thereof) shall not prevent the recording of such contract or conveyance in the land records of the clerk and recorder or the county in which such city or town is located, in such manner as to afford actual or constructive notice thereof.

(b) A municipality may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality may, by public notice by publication once each week for three consecutive weeks in a newspaper having a general circulation in the community, prior to the execution of any contract or deed to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite bids from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any

part thereof. Such notice shall identify the area, or portion thereof and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all redevelopment or rehabilitation bids and the financial and legal ability of the persons making such bids to carry them out. The municipality may accept such bids as it deems to be in the public interest and in furtherance of the purposes of this act. Thereafter, the municipality may execute, in accordance with the provisions of subsection (a), and deliver contracts, deeds, leases, and other instruments of transfer.

(c) A municipality may operate and maintain real property acquired in an urban renewal area pending the disposition of the property for redevelopment, without regard to the provisions of subsection (a) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan. Provided, however, that the municipality may, after a public hearing, extend the time for a period not to exceed three years.

History: En. Sec. 9, Ch. 195, L. 1959.

11-3910. Issuance of bonds. (a) A municipality shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from, or held in connection with, its undertaking and carrying out of urban renewal projects under this act; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this act.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall be subject only to the provisions of the Uniform Commercial Code. Bonds issued under the provisions of this act are declared to be issued for an essential public and governmental purpose, and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, not exceeding six per centum (6%) per annum, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or

without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(d) Such bonds may be sold at not less than ninety-eight per cent (98%) of par at public or private sale, or may be exchanged for other bonds on the basis of par: Provided, that such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at public or private sale at not less than ninety-eight per cent (98%) of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(e) The municipality may annually pay into a fund to be established for the benefit of such bonds any and all excess of the taxes received by it from the same property over and above the average of the annual taxes authorized without vote for a five-year period immediately preceding the acquisition of the property by the municipality for renewal purposes, such payment to continue until such time as all bonds payable from the fund are paid in full. Any other taxing unit in a municipality is authorized to allocate a like amount of such excess taxes to the municipality or municipalities in which it is situated.

(f) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(g) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this act.

History: En. Sec. 10, Ch. 195, L. 1959; amd. Sec. 11-109, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "shall be subject only to the provisions of the

Uniform Commercial Code" at the end of the first sentence of subsection (b) for "shall not be subject to the provisions of any other law or charter relating the authorization, issuance, or sale of bonds."

11-3911. Bonds as legal investments. All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking or investment business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a

municipality pursuant to this act: Provided, that such bonds and other obligations shall be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of, and the interest on, such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions, and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

History: En. Sec. 11, Ch. 195, L. 1959.

11-3912. Property exempt from taxes and from levy and sale by virtue of an execution. (a) All property of a municipality, including funds, owned or held by it for the purposes of this act, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall judgment against a municipality be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to, or limit the right of, obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this act by a municipality on its rents, fees, grants, or revenues from urban renewal projects.

(b) The property of a municipality, acquired or held for the purposes of this act, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state, or any political subdivision thereof: Provided, that such tax exemption shall terminate when the municipality sells, leases, or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body or other organization normally entitled to tax exemption with respect to such property.

History: En. Sec. 12, Ch. 195, L. 1959.

11-3913. Cooperation by public bodies. (a) For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project located within the area in which it is authorized to act, any public body authorized by law or by this act, may, upon such terms, with or without consideration, as it may determine: (1) dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or other rights or privileges therein to a municipality; (2) incur the entire expense of any public improvements made by such public body, in exercising the powers granted in this section; (3) do any and all things nec-

essary to aid or cooperate in the planning or carrying out of an urban renewal plan; (4) lend, grant, or contribute funds to a municipality; (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted by this act, including the furnishing of funds or other assistance in connection with an urban renewal project, and (6) cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan, zone or rezone any part of the urban renewal area; and provide such administrative and other services as may be deemed requisite to the efficient exercise of the powers herein granted.

(b) Any sale, conveyance, lease, or agreement provided for in this section shall be made by a public body with appraisal, public notice, advertisement, or public bidding in accordance with provisions of section 9 (b) [11-3909].

(c) For the purpose of this section, or for the purpose of aiding in the planning, undertaking or carrying out of an urban renewal project of a municipality, such municipality, in addition to any authority to issue bonds pursuant to section 10 [11-3910], may issue and sell its general obligation bonds. Any bonds issued pursuant to this section shall be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such municipality for public purposes generally.

History: En. Sec. 13, Ch. 195, L. 1959.

11-3914. Title of purchaser. Any instrument executed by a municipality and purporting to convey any right, title, or interest in any property under this act, shall be conclusively presumed to have been executed in compliance with the provisions of this act insofar as title or other interest of any bona fide purchasers, lessees, or transferees of such property is concerned.

History: En. Sec. 14, Ch. 195, L. 1959.

11-3915. Exercise of powers in carrying out urban renewal project. (a) A municipality may itself exercise its urban renewal project powers (as herein defined) or may, if the local governing body by resolution determines such action to be in the public interest, elect to have such powers exercised by the urban renewal agency (created by section 16 [11-3916]) or a department or other officers of the municipality as they are authorized to exercise under this act.

(b) In the event the local governing body makes such determination, such body may authorize the urban renewal agency or department or other officers of the municipality to exercise any of the following urban renewal project powers:

(1) To formulate and coordinate a workable program as specified in section 4 [11-3904].

(2) To prepare urban renewal plans.

(3) To prepare recommended modifications to an urban renewal project plan.

(4) To undertake and carry out urban renewal projects as required by the local governing body.

(5) To make and execute contracts as specified in section 7 [11-3907], with the exception of contracts for the purchase or sale of real or personal property.

(6) To disseminate blight clearance and urban renewal information.

(7) To exercise the powers prescribed by section 7 (b) [11-3907], except the power to agree to conditions for federal financial assistance and imposed pursuant to federal law relating to salaries and wages shall be reserved to the local governing body.

(8) To enter any building or property, in any urban renewal area, in order to make surveys and appraisals in the manner specified in section 7 (c) [11-3907].

(9) To improve, clear, or prepare for redevelopment any real or personal property in an urban renewal area.

(10) To insure real or personal property as provided in section 7 (c) [11-3907].

(11) To effectuate the plans provided for in section 7 (f) [11-3907].

(12) To prepare plans for the relocation of families displaced from an urban renewal area and to coordinate public and private agencies in such relocation.

(13) To prepare plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.

(14) To conduct appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban renewal projects.

(15) To negotiate for the acquisition of land.

(16) To study the closing, vacating, planning, or replanning of streets, roads, sidewalks, way, or other places and to make recommendations with respect thereto.

(17) To organize, coordinate, and direct the administration of the provisions of this act.

(18) To perform such duties as the local governing body may direct so as to make the necessary arrangements for the exercise of the powers and performance of the duties and responsibilities entrusted to the local governing body.

Any powers granted in this act that are not included in section 15 (b) [subsection (b) of this section] as powers of the urban renewal agency or a department or other officers of a municipality in lieu thereof, may only be exercised by the local governing body or other officers, boards, and commissions as provided under existing law.

History: En. Sec. 15, Ch. 195, L. 1959.

11-3916. Urban renewal agency. (a) When a municipality has made the finding prescribed in section 5 [11-3905] and has elected to have the urban renewal project powers, as specified in section 15 [11-3915], exercised, such urban renewal project powers may be assigned to a department or other officers of the municipality or to any existing public body corporate, or the legislative body of a city may create an urban renewal agency in such municipality to be known as a public body corporate to which such powers may be assigned.

(b) If the urban renewal agency is authorized to transact business and exercise powers hereunder, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which shall consist of five commissioners. The initial membership shall consist of one commissioner appointed for one year, one for two years, one for three years, and two for four years; and each appointment thereafter shall be for four years.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers and responsibilities of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers and responsibilities of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the by-laws shall require a larger number. Any persons may be appointed as commissioners if they reside within the municipality.

The urban renewal agency or department or officers exercising urban renewal project powers shall be staffed with the necessary technical experts and such other agents and employees, permanent and temporary, as it may require. An agency authorized to transact business and exercise powers under this act shall file, with the local governing body, on or before March 31 of each year, a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of such calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk and in the office of the agency.

(d) For inefficiency, neglect of duty, or misconduct in office, a commissioner may be removed.

History: En. Sec. 16, Ch. 195, L. 1959.

11-3917. Prohibition against discrimination. For all of the purposes of this act, no person shall, because of race, creed, color, or national origin, be subjected to any discrimination.

History: En. Sec. 17, Ch. 195, L. 1959.

11-3918. Interested public officials, commissioners, or employees. No public official, or employee of a municipality or urban renewal agency or department or officers which have been vested by a municipality with urban renewal project powers and responsibilities under section 15 [11-3915], shall voluntarily acquire any interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project of such municipality, or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the local governing body and such disclosure shall be entered upon the minutes of the governing body. If any such official, department or division head owns or controls, or owned or controlled within two years prior to the date of hearing on the urban renewal project, any interest, direct or indirect, in any property which he knows is included in an urban renewal project, he shall immediately disclose this fact in writing to the local governing body, and such disclosure shall be entered upon the minutes of the governing body, and any such official, department or division head shall not participate in any action on that particular project by the municipality or urban renewal agency, department, or officers which have been vested with urban renewal project powers by the municipality pursuant to the provisions of section 15 [11-3915]. A majority of the commissioners of an urban renewal agency exercising powers pursuant to this act shall not hold any other public office under the municipality other than their commissionership or office with respect to such urban renewal agency, department, or offices. Any violation of the provisions of this section shall constitute misconduct in office.

History: En. Sec. 18, Ch. 195, L. 1959.

11-3919. Separability—act controlling. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall be not affected thereby.

Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.

History: En. Sec. 19, Ch. 195, L. 1959.

11-3920. Short title. This act shall be known and may be cited as the "Urban Renewal Law."

History: En. Sec. 20, Ch. 195, L. 1959.

CHAPTER 40—OPEN DITCHES

- Section 11-4001. Purpose of act.
 11-4002. Unfenced, open ditch declared nuisance.
 11-4003. Powers of governing body.
 11-4004. Notice to close and fill ditch—publication.
 11-4005. Notice of intent to provide for protective devices—period allowed for compliance.
 11-4006. Commercial irrigation ditches exempt.

11-4001. Purpose of act. The legislative assembly declares that the control of ditch water in inhabited areas of Montana is affected with the public interest. The purpose of this act is to prevent drowning of children in ditches filled or partially filled with water within the limits of an incorporated city or town, if such ditches terminate within the limits of such city or town. This act shall be deemed an exercise of the police power of the state in and for the protection of the welfare, health, peace and safety of the people of Montana.

Nothing in this act shall be construed as intending to effectuate the abandonment of any valid water right. This act shall be construed merely as a regulation in the public interest so that the diversion, transportation and use of water in such ditches in cities and towns shall be in a safe manner, as defined by this act.

History: En. Sec. 1, Ch. 63, L. 1961.

Title of Act

An act to permit an incorporated city or town to prevent the diversion or passage of water through the limits of such city or town in unfenced, open ditches that terminate in such city or town in order

to protect persons from drowning, except commercial irrigation ditches; permitting a city or town to declare such a ditch a public nuisance; permitting a city or town to have such an unfenced, open ditch enjoined as a public nuisance if corrective measures are not taken by interested parties.

11-4002. Unfenced, open ditch declared nuisance. Notwithstanding any provision contained in Title 89, Revised Codes of Montana, 1947, or any law pertaining to the use of water in Montana, it is hereby declared that water which flows through the limits of an incorporated city or town in an unfenced, open ditch that terminates within the limits of such city or town is a public nuisance, if such city or town declares it to be such nuisance, acting through its governing body.

History: En. Sec. 2, Ch. 63, L. 1961.

11-4003. Powers of governing body. The governing body of the city or town is hereby given the power:

(1) To investigate the dangerous condition of such ditches terminating within the corporate limits and to declare any such ditch a public nuisance, and

(2) To determine the measures necessary to remove the danger and public nuisance, including fencing, use of culvert or other protective device based upon standards to be determined by such city or town.

History: En. Sec. 3, Ch. 63, L. 1961.

11-4004. Notice to close and fill ditch—publication. When a public nuisance has been declared as provided in this act, the city or town shall give public notice for at least sixty (60) days to owners of the ditch and of any water rights affected that such ditch has been declared a public

nuisance and that it shall be closed and filled unless the owners of such rights desire to keep the ditch open. Such notice shall include publication once each week in an established newspaper published within the city or town, if one exists, or in its absence in the official county newspaper for at least (8) successive weeks.

History: En. Sec. 4, Ch. 63, L. 1961.

11-4005. Notice of intent to provide for protective devices—period allowed for compliance. If a person claims that the water has not been abandoned and claims the right to use water in a ditch that the city or town has declared a public nuisance, he shall notify the city or town before the expiration of the sixty (60) day period that he wishes to continue the use of such water within the city or town and that he, individually or with others, will provide such protective devices as ordered by the city or town. If such notice is given, the person or persons claiming such right or rights shall have a period not to exceed six (6) months to remove the public nuisance in the manner ordered by the city or town.

If the city or town approves the work, it shall permit the water to flow into the city or town. If the protective device is not provided, or if it does not meet specifications required by the city or town, the city or town may designate such ditch abandoned and order it closed or filled when the six-month period ends.

History: En. Sec. 5, Ch. 63, L. 1961.

11-4006. Commercial irrigation ditches exempt. This act does not apply to ditches carrying water used for commercial irrigation purposes.

History: En. Sec. 6, Ch. 63, L. 1961.

CHAPTER 41—INDUSTRIAL DEVELOPMENT PROJECTS

- Section** 11-4101. Definition of terms.
 11-4102. General municipal and county powers.
 11-4103. Limited obligation bonds—form and contents—sale—negotiability.
 11-4104. Provisions for security of bondholders.
 11-4105. Determination of costs—terms of lease.
 11-4106. Refunding of bonds.
 11-4107. Use of proceeds of bond sales.
 11-4108. Taxation of projects.
 11-4109. Powers cumulative.
 11-4110. Advice and information by state planning board.

11-4101. Definition of terms. As used in this act, unless the context otherwise requires: (1) Municipality shall mean any incorporated city or town in the state;

(2) Project shall mean any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for manufacturing or industrial enterprises;

(3) Governing body shall mean the board or body in which the general legislative powers of the municipality or county are vested; and

(4) Mortgage shall mean a mortgage or a mortgage and deed of trust, or other security device.

History: En. Sec. 1, Ch. 51, L. 1965.

Title of Act

An act relating to industrial development; to define terms; to provide for the acquisition, purchase, construction, reconstruction, improvement, betterment and extension of industrial development by

cities, towns and counties for the prescribed uses and purposes; to authorize and regulate the issuance of mortgages and revenue bonds for financing such industrial development as prescribed; to provide for payment of such mortgages and bonds; to provide for leasing of property; and to provide for payment of taxes.

11-4102. General municipal and county powers. In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers: (1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one or more projects, which shall be located within this state, and may be located within, without, partially within or partially without the municipality or county;

(2) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of this act;

(3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any project or projects, and to secure the payment of such bonds as provided in this act, which revenue bonds may be issued in two (2) or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this act; and

(4) To sell and convey any real or personal property acquired as provided by subdivision (1) of this section, and make such order respecting the same as may be deemed conducive to the best interest of the municipality or county; provided, that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear of any other encumbrance.

No municipality or county shall have the power to operate any project, referred to in this section, as a business or in any manner except as the lessor thereof, nor shall they have any power to acquire any such project, or any part thereof, by condemnation.

History: En. Sec. 2, Ch. 51, L. 1965.

11-4103. Limited obligation bonds—form and contents—sale—negotiability. (1) All bonds issued by a municipality or county under the authority of this act shall be limited obligations of the municipality or county. Bonds and interest coupons, issued under the authority of this act, shall not constitute nor give rise to a pecuniary liability of the municipality or county or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds.

(2) The bonds, referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in registered

or bearer form either as to principal or interest or both, (e) be payable in such installments and at such time or times not exceeding thirty (30) years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates, payable at such place or places, and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and (i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality or county and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds, issued under the authority of this act, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality or county may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the projects.

(4) All bonds, issued under the authority of this act, and all interest coupons applicable thereto shall be construed to be negotiable instruments, despite the fact that they are payable solely from a specified source.

History: En. Sec. 3, Ch. 51, L. 1965.

11-4104. Provisions for security of bondholders. (1) The principal of and interest on any bonds issued under the authority of this act (a) shall be secured by a pledge of the revenues out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the project, and (c) may be secured by a pledge of the lease of such project, or (d) may be secured by such other security device as may be deemed most advantageous by the issuing authority.

(2) The proceedings, under which the bonds are authorized to be issued under the provisions of this act, and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any project covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease of such project, (c) the maintenance and insurance of such project, (d) the creation and maintenance of special funds from the revenues of such project, and (e) the rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this act; provided, that in making any such agreements or provisions a municipality or county shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of this act and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on

such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced be [by] mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage, made under the provisions of this act, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or county or any charge upon their general credit or against their taxing powers.

History: En. Sec. 4, Ch. 51, L. 1965.

Compiler's Note

The compiler has inserted the bracketed word "by" in subsection (3).

11-4105. Determination of costs—terms of lease. (1) Prior to the leasing of any project, the governing body must determine and find the following: The amount necessary to pay the principal of and the interest on the bonds proposed to be issued to finance such project; the amount necessary to be paid into any reserve funds which the governing body may deem it advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the project including taxes; and, unless the terms under which the project is to be leased provide that the lessee shall maintain the project and carry all proper insurance with respect thereto, the estimated cost of maintaining the project in good repair and keeping it properly insured.

(2) The determinations and findings of the governing body, required to be made by subsection (1) of this section, shall be set forth in the proceedings under which the proposed bonds are to be issued. Prior to the issuance of the bonds authorized by this act, the municipality or county shall lease the project to a lessee or lessees under an agreement conditioned upon completion of the project and providing for payment to the municipality or county of such rentals as, upon the basis of such determinations and findings, will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the project, (b) to pay the taxes on the project, (c) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (d) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the project, to pay the costs of maintaining the project in good repair and keeping it properly insured. Subject to the limitations of this act, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties, and notwithstanding any other provisions of law

relating to the sale of property owned by municipalities and counties, such lease may contain an option for the lessees to purchase the project on such terms and conditions as may be mutually acceptable to the parties.

History: En. Sec. 5, Ch. 51, L. 1965.

11-4106. Refunding of bonds. Any bonds issued under the provisions of this act and at any time outstanding may at any time and from time to time be refunded by a municipality or county by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith; provided, that an issue of refunding bonds may be combined with an issue of additional revenue bonds on any project when the combined total meets the requirements of subsection (5) of section 5 [11-4105] of this act. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby; provided, that the holders of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable by maturity date, option to redeem, or otherwise, or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption by option or otherwise. Any refunding bonds issued under the authority of this act shall be subject to the provisions contained in section 3 [11-4103] of this act and may be secured in accordance with the provisions of section 4 [11-4104] of this act.

History: En. Sec. 6, Ch. 51, L. 1965.

11-4107. Use of proceeds of bond sales. The proceeds from the sale of any bonds issued under authority of this act shall be applied only for the purpose for which the bonds were issued; provided, that any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold; and provided further, that if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any project shall be deemed to include the following: The actual cost of acquiring or improving real estate for any project; the actual cost of construction of all or any part of a project which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvement; and the interest on such bonds for a reasonable time prior to construction, during construction, and for not exceeding six (6) months after completion of construction.

History: En. Sec. 7, Ch. 51, L. 1965.

11-4108. Taxation of projects. Notwithstanding that title to a project may be in a municipality or county, such projects shall be subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances, if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in any year; but such projects shall not be subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in any year; provided, that where personal property owned by a municipality or county is taxed under this section and such personal property taxes are delinquent, levy by distress warrant for collection of such delinquent taxes may only be made on personal property against which such taxes were levied.

History: En. Sec. 8, Ch. 51, L. 1965.

11-4109. Powers cumulative. Neither this act nor anything herein contained shall be construed as a restriction or limitation upon any powers which a municipality or county might otherwise have under any laws of this state, but shall be construed as cumulative.

History: En. Sec. 9, Ch. 51, L. 1965.

11-4110. Advice and information by state planning board. The state planning board shall furnish advice and information in connection with a project when requested to do so by a county or municipality.

History: En. Sec. 10, Ch. 51, L. 1965.

Separability Clause

Section 11 of Ch. 51, Laws 1965 read
"If any section in this act or any part of

any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof."

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VOLUME 2 1965 Cumulative Pocket Supplement

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AND

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- Licenses, 26-201, 26-202.1 to 26-202.3, 26-215, 26-222.
- Restrictions on taking, 26-301, 26-332.
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- Taxidermist's license, 26-907.
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- Waste of parts of game animals, 26-307.

Food stores, 27-310, 27-313.

Funds of county, city, and towns, 16-2618.

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Insecticide regulation, 27-203.

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Milk Control Act, 27-403 to 27-407, 27-409, 27-410, 27-414, 27-416, 27-417.

Oil and gas companies, merger, 15-1801.

Rural Electric and Telephone Cooperative Act, 14-501 to 14-504, 14-508 to 14-510, 14-516, 14-527, 14-528, 14-530.

Rural improvement districts, 16-1601, 16-1602, 16-1605.1 to 16-1605.4, 16-1607, 16-1613, 16-1620, 16-1626, 16-1629.

Statute of frauds, 13-606.

Storage for hire, obligations of depository, 20-314.

Weed control, 16-1706, 16-1708 to 16-1708.3, 16-1713, 16-1723.

MONTANA REVISED CODES

TITLE 12—CODES AND LAWS

Chapter 3. Revised Codes of Montana 1947, codification authorized, 12-335 to 12-342.

CHAPTER 1—LAW DEFINED—HOW EXPRESSED—APPLICABILITY OF COMMON LAW

12-101. (5670) Definition of Law.

References

Cited or applied in *State ex rel. Burns v. Lacklen*, 129 M 243, 284 P 2d 998,

1004; *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dissenting opinion).

12-102. (5671) How expressed.

Written Law

The written law of this state is contained in its constitution and statutes and the constitution and statutes of the United States and it prevails as against the declaration or promulgation by this court of an opposing rule at variance with and contrary to such written law. *State ex rel.*

Burns v. Lacklen, 129 M 243, 284 P 2d 998, 1004.

References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dissenting opinion).

12-103. (5672) Common law, when rule of decision.

References

Cited in *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 983; *Duffy v. Lips-*

man-Fulkerson Co., 200 F Supp 71, 72; *Clark v. Clark*, 143 M 183, 387 P 2d 907.

12-104. (10703) Common law, applicability of.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 72, explained in 214 F Supp 298, 299.

Operation and Effect

Common-law rules have been supplanted by statutory law in all fields covered by statute. *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 983.

References

Cited in *Joy v. Little*, 138 M 110, 354 P 2d 1035, 1041.

CHAPTER 2—THE ENACTMENT, EFFECT, ARRANGEMENT AND CONSTRUCTION OF THE CODES

12-201. (3) Laws, when retroactive.

Rules of Civil Procedure

The giving effect to the service of summons provisions of Montana Rules of Civil Procedure, Rule 4, subd. B, when the operative facts of the case to which the rule applied had taken place prior to the effective date provided in Rule 86(a), was not a prohibited retroactive applica-

tion of Rule 4, subd. B, within the provisions of this section. *Weber v. Hydroponics, Inc.*, 226 F Supp 117, 118.

References

Cited or applied in *Yurkovich v. Industrial Accident Board*, 132 M 77, 314 P 2d 866, 872.

12-202. (4) Codes, how construed.

Operation and Effect

In construing a statute the whole act must be read together, and where there are several provisions or particulars such a construction is to be adopted as will give effect to all, if possible. *Yurkovich v. Industrial Accident Board*, 132 M 77, 314 P 2d 866, 870.

References

Cited or applied in *Gaffney v. Industrial Accident Board*, 129 M 394, 287 P 2d

256, 259; *Carlson v. Flathead County*, 130 M 24, 293 P 2d 273, 275; *State ex rel. Morgan v. Board of Examiners*, 131 M 188, 309 P 2d 336, 338; *Hill v. Billings*, 134 M 282, 328 P 2d 1112, 1114; *Miller v. Schrock*, 135 M 409, 340 P 2d 154, 157; *Dudley v. Stiles*, 142 M 566, 386 P 2d 342; *Jack Long Logging Co. v. Pyramid Mountain Lumber, Inc.*, 143 M 87, 387 P 2d 712.

CHAPTER 3—REVISED CODES OF MONTANA 1947, CODIFICATION AUTHORIZED

Section 12-335. Adoption of Replacement Volumes 2 and 5 as prima facie laws of Montana—citation.

12-336. Omissions—inaccuracies—effect.

12-337. Adoption of Replacement Volumes 1 and 9.

12-338. Omissions—inaccuracies—effect.

12-339. Adoption of Replacement Volumes 3 and 4.

12-340. Omissions—inaccuracies—effect.

12-341. Adoption of Replacement Volumes 6 and 7.

12-342. Omissions—inaccuracies—effect.

12-330. Revised Codes of Montana 1947 adopted as law.

Operation and Effect

Since chapter 84 of the 1937 Session Laws (Montana Retail Liquor License Act) was incorporated without reference to the original title in the Revised Codes of Montana 1947, as section 4-420, and

the Revised Codes of Montana 1947 were approved, legalized and adopted by the legislature under this section, any defect or omission in the title of the 1937 law was thereby cured. *State v. Garcia*, 132 M 600, 319 P 2d 962, 963.

12-335. Adoption of Replacement Volumes 2 and 5 as prima facie laws of Montana—citation. Replacement Volumes Number 2 and Number 5 of the Revised Codes of Montana of 1947 as published by the publishers and distributors of said Revised Codes of Montana of 1947 are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana of 1947 without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana of 1947 as included in the original compilation of the Revised Codes of Montana of 1947.

History: En. Sec. 1, Ch. 8, L. 1957.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana

the Replacement Volumes Number 2 and Number 5 of the Revised Codes of Montana of 1947, as published by the publishers and distributors of said codes.

12-336. Omissions—inaccuracies—effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any

act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 8, L. 1957. the act should be in effect from and after its passage and approval. Approved February 9, 1957.

Effective Date

Section 3 of Ch. 8, Laws 1957 provided

12-337. Adoption of Replacement Volumes 1 and 9. Replacement Volume Number 1 (in two parts) of the Revised Codes of Montana of 1947, as published by the publishers and distributors of said Revised Codes of Montana of 1947 is hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volume may be cited as sections of the Revised Codes of Montana of 1947 without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana of 1947, as included in the original compilation of the Revised Codes of Montana of 1947. Replacement Volume Number 9 is hereby adopted as an official part of the Revised Codes of Montana of 1947 and as the general index to the said Revised Codes of Montana.

History: En. Sec. 1, Ch. 2, L. 1959.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana Replacement Volume Number 1 (in two

parts) and to adopt as official Replacement Volume Number 9 of the Revised Codes of Montana of 1947, as published by the publishers and distributors of said code; and providing an effective date.

12-338. Omissions — inaccuracies — effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from, or erroneously or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 2, L. 1959. **Effective Date**

Section 3 of Ch. 2, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved January 28, 1959.

12-339. Adoption of Replacement Volumes 3 and 4. Replacement Volume Number 3 (in two parts) and Replacement Volume Number 4 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947 without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 18, L. 1963.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana

Replacement Volume Number 3 (in two parts) and Replacement Volume Number 4 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes.

12-340. Omissions—inaccuracies—effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from, or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 18, L. 1963.

its passage and approval. Approved January 29, 1963.

Effective Date

Section 3 of Ch. 18, Laws 1963 provided the act should be in effect from and after

12-341. Adoption of Replacement Volumes 6 and 7. Replacement Volume Number 6 (in two parts) and Replacement Volume Number 7 of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the titles and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 5, L. 1965.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Mon-

tana Replacement Volume Number 6 (in two parts) and Replacement Volume Number 7 of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes.

12-342. Omissions—inaccuracies—effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from, or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 5, L. 1965.

Effective Date

Section 3 of Ch. 5, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved January 28, 1965.

TITLE 13—CONTRACTS

Chapter 6. Creation of contracts—oral and written, 13-606.

CHAPTER 1—DEFINITION AND ESSENTIALS OF CONTRACT

13-102. (7468) Essential elements of contract.

References

Kuchinski v. Security General Ins. Co.,
141 M 515, 380 P 2d 889.

CHAPTER 2—PARTIES TO CONTRACT

13-202. (7470) Minors and persons of unsound mind, etc.

Cross-Reference

Power of minor to borrow money for
expenses of higher education, see section
64-106.1.

CHAPTER 3—CONSENT

13-301. (7473) Essentials of consent.

References

Kuchinski v. Security General Ins. Co.,
141 M 515, 380 P 2d 889.

13-308. (7480) Actual fraud, acts constituting.

Bad Faith

Where seller of land made representation that he had authority to sell his brother's land, which was adjoining, whereas in fact he did not have such authority, and where other evidence indicated that the seller made no effort to carry out other provisions of his contract

for sale, the district court was correct in finding him guilty of bad faith. Hart v. Honrud, 131 M 284, 309 P 2d 329, 332.

References

Holland Furnace Co. v. Rounds, 139 M 75, 360 P 2d 412, 91 ALR 2d 340.

13-311. (7483) Undue influence—in what it consists.

Relationship of Parties

In a will contest, where the jury found undue influence, trial judge did not abuse discretion in granting proponents a new trial on the question of influence which the jury found to exist with respect to proponents' mother, where the will was

executed without the knowledge of the beneficiaries, it was drafted by an attorney chosen by the testatrix, and testatrix did not change the will for twenty months before her death. In re Cocanougher's Estate, 141 M 16, 375 P 2d 1009, 1014.

13-316. (7488) Mutuality of consent.

References

Cited in Holmes v. Potts, 132 M 477, 319 P 2d 232, 238; Kuchinski v. Security General Ins. Co., 141 M 515, 380 P 2d 889.

13-318. (7490) Mode of communicating acceptance of proposal.**References**

Cited or applied in *Aasheim v. Hoven*,
137 M 179, 350 P 2d 1025, 1026.

13-319. (7491) When communication deemed complete.**References**

Cited or applied in *Aasheim v. Hoven*,
137 M 179, 350 P 2d 1025, 1026.

13-320. (7492) Acceptance by performance of conditions.**References**

Cited or applied in *Aasheim v. Hoven*,
137 M 179, 350 P 2d 1025, 1026.

13-321. (7493) Acceptance must be absolute.**Insurance Contract**

Where a renewal policy was sent to an insured, the sending of policy constituted an offer and offer by insured to take the policy for as long as ten dollars would

pay the premium was a new proposal, requiring acceptance by the insurer. *Kudrna v. Great Northern Ins. Co.*, 175 F Supp 783.

13-322. (7494) Revocation of proposal.**Acceptance of Offer**

Where there was an agreement between an optionee and a prospective purchaser that "it will have to be first man up with the money" who could take up an option for the purchase of an interest in a block of real estate leases, and the prospective

purchaser notified the optionee that the money had been raised, the purchaser's action constituted an acceptance and the optionee could not then revoke the offer. *Aasheim v. Hoven*, 137 M 179, 350 P 2d 1025.

CHAPTER 4—OBJECT**13-404. (7501) When contract wholly void.****References**

Cited or applied in *Bennett v. Dodgson*,
129 M 228, 284 P 2d 990, 995.

CHAPTER 5—CONSIDERATION**13-501. (7503) Good consideration, what constitutes.****Property Agreement Made before Divorce**

An agreement, the purpose of which is to facilitate the granting of a divorce without proper grounds existing, is void; but

where proper grounds do exist, an agreement with respect to a property settlement cannot be said to perpetrate a fraud upon the court and will not be held void. *Schulz v. Fox*, 136 M 153, 345 P 2d 1045.

13-504. (7506) Effect of illegality.**References**

Cited or applied in *Benson v. School*

Dist. No. 1 of Silver Bow County, 136 M 77, 344 P 2d 117, 121.

13-511. (7513) Burden of proof to invalidate sufficient consideration.**Operation and Effect**

In an action by lessor to cancel an oil and gas lease where the requirement of a geological survey was a part of the

consideration, it was necessary for the lessor to plead and prove the requirement. *Braun v. Mon-O-Co. Oil Corp.*, 133 M 101, 320 P 2d 366, 369.

CHAPTER 6—CREATION OF CONTRACTS—ORAL AND WRITTEN

Section 13-606. What contracts must be in writing.

13-605. (7518) Contract not in writing through fraud, etc.

Absence of Contract

Where no oral contract could be shown to exist, defendants could not be estopped from affirmatively pleading the statute of

frauds as a defense. *Anderson v. KFBB Broadcasting Corp.*, 143 M 423, 391 P 2d 2.

13-606. (7519) What contracts must be in writing. The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof.

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 30-105 of this code.

3. An agreement made upon consideration of marriage other than a mutual promise to marry.

4. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

5. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

This section shall not apply to agreements subject to the Uniform Commercial Code. [Effective January 1, 1965.]

History: Subds. 1 to 3; en. Secs. 12 to 14, p. 494, *Bannack Stat.*; re-en. Secs. 12 to 14, pp. 393, 394, *Cod. Stat.* 1871; re-en. Secs. 166 to 168, 5th Div. Rev. Stat. 1879; re-en. Secs. 223 to 225, 5th Div. Comp. Stat. 1887; amd. Sec. 2185, *Civ. C.* 1895; re-en. Sec. 5017, *Rev. C.* 1907. Subd. 4; ap. p. Sec. 8, p. 493, *Bannack Stat.*; re-en. Sec. 8, p. 393, *Cod. Stat.* 1871; re-en. Sec. 162, 5th Div. Rev. Stat. 1879; re-en. Sec. 219, 5th Div. Comp. Stat. 1887; amd. Sec. 2185, *Civ. C.* 1895; re-en. Sec. 5017, *Rev. C.* 1907. Subd. 5; en. Sec. 2185, *Civ. C.* 1895; re-en. Sec. 5017, *Rev. C.* 1907; all subdivisions re-en. Sec. 7519, *R. C. M.* 1921; amd. Sec. 11-110, *Ch.* 264, *L.* 1963. *Cal. Civ. C.* Sec. 1624.

memorandum did not name the parties to the alleged contract, but referred to them as "we" and "our" and also tended to show that further negotiations were intended by the parties, it was not sufficient to satisfy the statute. *Anderson v. KFBB Broadcasting Corp.*, 143 M 423, 391 P 2d 2.

Sufficiency of Memorandum

The note or memorandum necessary to meet the requirements of this section may consist of several writings, and it is sufficient if it contains all the essentials of the contract, although they are stated in general terms. *Hughes v. Melby*, 135 M 415, 340 P 2d 511.

The fact that the memorandum required by this section does not specify when the deed shall be furnished does not defeat the sufficiency of such memorandum because section 13-723 implies that it must be furnished within a reasonable time after the other party performs. *Hughes v. Melby*, 135 M 415, 340 P 2d 511.

Subd. 4**Oral Lease**

An oral lease for more than a year is invalid, and evidence of the agreement

Amendment

The 1963 amendment deleted former paragraph 4, for text of which see parent volume; renumbered former paragraphs 5 and 6 as 4 and 5; and added the final paragraph.

Section Generally

While the statute of frauds does not require that the memorandum be contained in a single document, where a

and secondary evidence of its contents cannot be introduced. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 89.

A one year oral lease under section 42-203 is not within the statute of frauds, and a continuous renewal thereof under section 42-205 would also not be within the statute. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

Under section 42-203 it is possible to have an oral lease for at least one year without an expression as to time therein. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 89.

Statute of frauds has no application to executed portion of oral lease. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

Subd. 5

Listing Contract

A listing contract empowering realtors to sell apartment building, being limited to question of sale of the building, was not evidence of any alleged oral agreement providing for management of the building by the realtors. *Quitmeyer v.*

Theroux, — M —, 395 P 2d 965, 968. (Dissenting opinion, — M —, 395 P 2d 965, 971.)

Rights-of-Way of Necessity

There are no implied grants or reservations of rights-of-way of necessity in Montana. *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984.

Sale of Ranch

In action for specific performance of contract for purchase of ranch of defendants, writings were sufficient to take the case out of the statute of frauds where instrument giving broker exclusive right for 30 days to sell ranch for \$30,000, provided that defendants were to pay broker a \$1,000 commission, recited that terms of sale were cash to defendants, possession should be taken by purchaser on named date and that defendants, who retained a 5% royalty, agreed to pay 1953 taxes and transfer all lease land to purchaser, who accepted unqualifiedly in writing accompanied by check as down payment. *Ward v. Mattuschek*, 134 M 307, 330 P 2d 971.

CHAPTER 7—INTERPRETATION OF CONTRACTS

13-701. (7526) Uniformity of interpretation.

Operation and Effect

Where a deed of land contained a clause, following the description of the land, which said "including one-half of all oil and gas rights owned by the parties," it must be considered that it was

the intention of the parties to exclude from the deed the other one-half interest in the oil and gas and that such one-half remained with the grantor. *Wyrick v. Hoeft*, 136 M 172, 346 P 2d 563.

13-702. (7527) Contracts—how to be interpreted.

References

Cited or applied in *Barovich v. City of Miles City*, 135 M 394, 340 P 2d 819; *Guidici v. Minerals Engineering Co.*, 136

M 389, 348 P 2d 354, 361; *Kuchinski v. Security General Ins. Co.*, 141 M 515, 380 P 2d 889.

13-703. (7528) Intention of parties—how ascertained.

References

Peerless Casualty Co. v. Mountain States Mutual Casualty Co., 283 F 2d 268, 278.

13-704. (7529) Intention to be ascertained from language.

Crop-share Agreement

Where contract provided that farm laborer would be paid \$150 per month cash, would get 10% of the harvested crops after harvest, and would be expected to stay for a twelve-month period, he was entitled to his share of the crop due on his crop-share agreement when wheat and barley were placed in storage at elevator although safflower, in which laborer did not share, had not been cut. Failure

of employer to pay laborer's share on demand constituted a breach of contract and it was not necessary for laborer to complete the twelve-month term in order to recover his percentage of the crops. *Laughnan v. Sorenson*, 139 M 531, 366 P 2d 433, 434.

Insurance Contract

Although a contract of insurance should be construed liberally in favor of insured

and strictly against the insurer, contracts of insurance should be given a fair and reasonable construction. In arriving at such construction, no matter how strictly construed against the insurer, the intention of both insurer and insured should be ascertained from the language of the policy. *Kansas City Fire & Marine Ins. Co. v. Clark*, 217 F Supp 231, 235.

13-705. (7530) Interpretation of written contracts.

Operation and Effect

Parol evidence which tended to vary or alter the terms of a written chattel mortgage will be disregarded where the chattel mortgage was plain and unambiguous and needed no construction. *First Nat. Bank of Plains v. Green Mt. Soil Conservation District*, 130 M 1, 293 P 2d 289.

Reinsurance Contract

Where amended agreement between automobile insurer and reinsurer was the

References

Cited or applied in *James v. Prudential Ins. Co. of America*, 131 M 473, 312 P 2d 125, 127; *Peerless Casualty Co. v. Mountain States Mutual Casualty Co.*, 283 F 2d 268, 278.

same as that contained in prior agreement, which the parties had interpreted as contended for by the insurer, findings that agreement was ambiguous, and that the parties did not intend to give the words in the amendment a different meaning than that given in the agreement, being supported by substantial evidence, warranted judgment in favor of insurer. *Peerless Casualty Co. v. Mountain States Mutual Casualty Co.*, 283 F 2d 268, 276.

13-706. (7531) Writing—when disregarded.

Extrinsic Evidence

Where defendant charged with grand larceny by bailee did not deny that he received a check from the complaining witness, but his defense was that it was a loan instead of a payment for an automobile, evidence as to whether the check was a loan or payment for the automobile was admissible over objection that it permitted a witness to vary a written

instrument by parol testimony. *State v. Ahl*, 140 M 305, 371 P 2d 7, 9.

Operation and Effect

This statute does not preclude the trial court from reforming an instrument which by reason of mistake or fraud fails to set forth the correct contentions of the parties. *Carroll v. Funk*, 222 F 2d 508, 511.

13-707. (7532) Effect to be given to every part of contract.

Construction of Deeds

Where a deed of land contained a clause, following the description of the land, which said "including one-half of all oil and gas rights owned by the parties," it must be considered that it was the intention of the parties to exclude from the deed the other one-half interest in the oil and gas and that such one-half remained with the grantor. *Wyrick v. Hoefle*, 136 M 172, 346 P 2d 563.

A quitclaim deed and assignment of contract for deed may be construed as security for the payment of a promissory note. *Kraus v. Newman*, 137 M 388, 352 P 2d 261, 262.

Insurance Contract

In construing an insurance contract effect must be given to every part of the insurance policy. *Kansas City Fire & Marine Ins. Co. v. Clark*, 217 F Supp 231, 235.

Lease With Option to Buy

Plaintiff's option to buy was exclusive and not conditioned upon defendants' de-

cision to sell where instrument did not use the term "first option to buy" and the entire language of the agreement showed that plaintiff was given an exclusive option to buy the property described under the lease; that his method of exercising his option was by tendering \$1,500 to the defendant, as called for by "Plan No. 2." *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1018.

Operation and Effect

A court, in interpreting a written instrument, will not isolate certain phrases of that instrument in order to garner the intent of the parties, but will grasp the instrument by its four corners and in the light of the entire instrument, ascertain the paramount and guiding intention of the parties. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1018.

More isolated tracts, clauses and words will not be allowed to prevail over the general language utilized in the instrument. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1018.

References

Cited or applied in *Davis v. Burton*, 128 M 434, 278 P 2d 213, 218; *James v. Prudential Ins. Co. of America*, 131 M 473, 312 P 2d 125, 127; *Guidici v. Minerals*

Engineering Co., 136 M 389, 348 P 2d 354, 361; *Peerless Casualty Co. v. Mountain States Mutual Casualty Co.*, 283 F 2d 268, 277.

13-708. (7533) Several contracts—when taken together.**Property Settlement**

Agreements as to disposition of property between estranged husband and wife, which were obviously to become operative in the future when a divorce proceeding was instituted, with condition that resistance to divorce would render the property settlement nugatory, when construed together, facilitated divorce and were void as a violation of public policy. *Western Life Ins. Co. v. Bower*, 153 F Supp 25, 30.

Provision of property settlement agreement under which husband relinquished

right to change beneficiary of life insurance policy, was severable from provisions facilitating divorce, and was enforceable, where wife presumably released certain property rights in consideration therefor. *Western Life Ins. Co. v. Bower*, 153 F Supp 25.

References

Cited or applied in *Fey v. A. A. Oil Corporation*, 129 M 300, 285 P 2d 578, 583; *Cottrell v. Weinheimer*, 137 M 347, 351 P 2d 543, 547, 90 ALR 2d 1339.

13-709. (7534) Interpretation in favor of contract.**References**

Cited or applied in *Guidici v. Minerals Engineering Co.*, 136 M 389, 348 P 2d 354,

361; *Peerless Casualty Co. v. Mountain States Mutual Casualty Co.*, 283 F 2d 268, 277.

13-710. (7535) Words to be understood in usual sense.**"Actual Cash Value"**

Where dealer's trucks were insured for "actual cash value," it was not error to allow insured to recover the retail market value of the destroyed property rather than the wholesale market value. *Johnson v. Equitable Fire & Marine Ins. Co.*, 142 M 128, 381 P 2d 778.

Kansas City Fire & Marine Ins. Co. v. Clark, 217 F Supp 231, 235.

References

Cited or applied in *James v. Prudential Ins. Co. of America*, 131 M 473, 312 P 2d 125, 127; *Peerless Casualty Co. v. Mountain States Mutual Casualty Co.*, 283 F 2d 268, 278.

Insurance Contract

The words of an insurance contract are to be understood in their usual meaning.

13-714. (7539) Contract restricted to its evident object.**References**

Peerless Casualty Co. v. Mountain States Mutual Casualty Co., 283 F 2d 268, 277.

13-715. (7540) Interpretation in sense in which promisor believed, etc.**Reservation of Mineral Interest**

In action for specific performance arising over interpretation of contract for conveyance of land reserving mineral interest, where cross complaint of defendants alleged that the contract was ambiguous and uncertain and prayed for a

declaratory judgment to adjudicate the rights of the parties, it was the duty of the trial court to determine the intent of the parties and the exclusion of parol evidence of intent was error. *Stokes v. Tut-tet*, 134 M 250, 328 P 2d 1096, 1103, 1104.

13-716. (7541) Particular clauses subordinate to general intent.**References**

Peerless Casualty Co. v. Mountain

States Mutual Casualty Co., 283 F 2d 268, 278.

13-718. (7543) Repugnancies—how reconciled.**References**

Cited or applied in *Wyrick v. Hoefle*, 136 M 172, 346 P 2d 563.

13-719. (7544) Inconsistent words rejected.**References**

Peerless Casualty Co. v. Mountain States Mutual Casualty Co., 283 F 2d 268, 278.

13-720. (7545) Words to be taken most strongly against whom.**Acceptance of Agreement**

Defendants' demurrer was properly sustained in action on a written contract where complaint did not allege a written acceptance by the plaintiff and the agreement was to be effective only when it was accepted and when defendants were notified by letter of plaintiff's acceptance. *Union Interchange, Inc. v. Allen*, 140 M 227, 370 P 2d 492, 496.

Insurance Policies

Even though an insurance contract is to be construed liberally in favor of the insured and strictly against the insurer, contracts of insurance should be given a fair and reasonable construction. *James v. Prudential Ins. Co. of America*, 131 M 473, 312 P 2d 125, 127.

Where dealer's trucks were insured for "actual cash value," this term was ambiguous and when properly construed in

sense most favorable to insured, it was not error to permit dealer to recover the retail market value of the destroyed property rather than the wholesale market value. *Johnson v. Equitable Fire & Marine Ins. Co.*, 142 M 128, 381 P 2d 778.

Sale Agreement

If any uncertainty exists in the sale agreement and the deeds, it must be construed most strongly against the person causing the uncertainty. This was true in the case of a realtor, scrivener, who in turn was vendor's agent. *Voyta v. Clonts*, 134 M 156, 328 P 2d 655, 661.

References

Cited or applied in *Guidici v. Minerals Engineering Co.*, 136 M 389, 348 P 2d 354, 362.

13-723. (7548) Time of performance of contract.**Crop-share Agreement**

Where contract provided that farm laborer would be paid \$150 per month cash, would get 10% of the harvested crops after harvest, and would be expected to stay for a twelve-month period, he was entitled to his share of the crop due on his crop-share agreement when wheat and barley were placed in storage at elevator although safflower, in which laborer did not share, had not been cut. Failure of employer to pay laborer's share on demand constituted a breach of contract and it was not necessary for laborer to complete the twelve-month term in order

to recover his percentage of the crops. *Laughnan v. Sorenson*, 139 M 531, 366 P 2d 433, 434.

Operation and Effect

That no definite time was stipulated for performance by the purchaser of the payment of money is immaterial for our law implies an agreement here to perform within a reasonable time. *Bennett v. Dodgson*, 129 M 228, 284 P 2d 990, 994.

References

Cited or applied in *Hughes v. Melby*, 135 M 415, 340 P 2d 511.

13-724. (7549) Time—when of essence.**Omission of Statement**

Where a lease with option to purchase does not state that time is of the essence, failure of the optionee to perform the covenants strictly at the time they may

or should be performed will not cause him to lose his right to specific performance of the option. *Continental Oil Co. v. McNair Realty Co.*, 137 M 410, 353 P 2d 100, 109.

13-727. (7552) Executed and executory contracts defined.**References**

Cited in *Dalakow v. Geery*, 132 M 457, 318 P 2d 253, 256.

CHAPTER 8—UNLAWFUL CONTRACTS

13-801. (7553) What is unlawful.

Operation and Effect

A resolution of the board of county commissioners which extinguished the assessed tax of a taxpayer was void as such boards have no power, authority or jurisdiction under the constitution nor statutes to reduce, compromise, remit, release, cancel, diminish or extinguish any state tax, obligation or liability, nor any assessed tax valuation or percentage assignments of property after the same has been found, determined and fixed by the state board of equalization. Likewise, the direction

of the board directing the county attorney to stipulate with the attorneys for the taxpayer, to request the court to enter judgment against the county and state was and is wholly void and of no legality whatever. Such void act, understanding and agreement by public officials, void in its inception, is not validated by performance and remains a void act or agreement under the public policy established by the legislature. *Carlson v. Flathead County*, 130 M 36, 293 P 2d 279, 284. (Dissenting opinion, 130 M 36, 293 P 2d 279, 286.)

13-802. (7554) Certain contracts unlawful.

Specific Indemnity Clause in Lease

A specific indemnity clause in a lease agreement between a railroad and a lessee which provided that the lessee would indemnify the railroad for claims, "whether due or not due to the negligence" of the railroad, was not invalid as applied to the allegations in a complaint by a person seeking recovery from the railroad for

injuries allegedly received because of a violation by the railroad of section 72-219, making it a misdemeanor for a railroad to permit a locomotive to approach a crossing without giving a proper warning. *Ryan Mercantile Co. v. Great Northern Ry. Co.*, 186 F Supp 660, affirmed in 294 F 2d 629.

13-806. (7558) Restraints upon legal proceedings.

Agreement as to Venue

This statute is not violated by a stipulation regarding venue of an action brought against one in a county where he agreed it might be brought. *Electrical Products Consolidated v. Bodell*, 132 M 243, 316 P 2d 788, 790, 69 ALR 2d 1318.

Arbitration Provision

In view of this section, submission of a controversy to arbitration is not required as a condition precedent to bringing action, even though the contract contains

a clause requiring arbitration. *Green v. Wolff*, 140 M 413, 372 P 2d 427, 433.

"No Judgment" Clause

A "no judgment" clause, making uninsured motorist coverage inapplicable if the insured prosecutes his claim against an uninsured third party without the consent of the insurer, is void and unenforceable. *Dominici v. State Farm Mutual Automobile Ins. Co.*, 143 M 406, 390 P 2d 806.

13-807. (7559) Contract in restraint of trade void.

Covenant Not to Compete

A covenant not to compete is a restrictive covenant in restraint of trade, and is valid only if it constitutes a reason-

able restriction on the freedom to do business within the provisions of sections 13-808 and 13-809. *Jenson v. Olson*, — M —, 395 P 2d 465, 467.

13-808. (7560) Exception in favor of sale of good-will.

Breach by Seller

Where buyer broke contract by failing to make agreed payments for exclusive business rights in a territory and seller entered the territory after buyer's breach but in violation of the agreement, buyer was then entitled to a setoff of the amount of profit which seller took from the restricted territory when seller brought action on the full amount of the contract. *Leiman-Scott, Inc. v. Holmes*, 142 M 58, 381 P 2d 489.

Restrictive Covenant Not to Compete

Covenant between partners, dissolving dairy products partnership, one taking retail business, the other the wholesale business, which was to last for nine years and was to be confined to city where partnership had been conducted, was valid under this section and sections 13-807 and 13-809 as a restrictive covenant not to compete. *Jenson v. Olson*, — M —, 395 P 2d 465, 467.

13-809. (7561) Exception in favor of partnership agreements.**Restrictive Covenant Not to Compete**

Covenant between partners, dissolving dairy products partnership, one taking retail business, the other the wholesale business, which was to last for nine years and was to be confined to city where partner-

ship had been conducted, was valid under this section and sections 13-807 and 13-808 as a restrictive covenant not to compete. *Jenson v. Olson*, — M —, 395 P 2d 465, 467.

CHAPTER 9—EXTINCTION OF CONTRACTS—RESCISSION—ALTERATION—CANCELLATION**13-903. (7565) When party may rescind.****Failure of Consideration**

Chattel mortgages given for the purchase of an automobile were without consideration where vendor failed to register transfer under section 53-109 which was necessary to pass title to the buyer. *Sonnek v. Universal C. I. T. Credit Corp.*, 140 M 503, 374 P 2d 105, 108, explained in 142 M 155, 162, 382 P 2d 174.

Fraud

The purchaser of an automobile was entitled to rescind chattel mortgages given for purchase of the car where it was misrepresented by the seller and the seller and the assignee of the chattel mortgages failed to pass title to the buyer. *Sonnek v. Universal C. I. T. Credit Corp.*, 140 M 503, 374 P 2d 105, 108, explained in 142 M 155, 162, 382 P 2d 174.

Oral Cancellation

A written contract may be canceled by mutual consent, and such cancellation may

be oral. *West River Equipment Co. v. Holzworth Constr. Co.*, 134 M 582, 335 P 2d 298.

Oral Termination

A written lease for term of years may be terminated by an oral agreement provided the conduct of the parties is consistent with such an agreement. *Rodgers v. Saunders*, — M —, 396 P 2d 817.

Written Cancellation

If the prior written contract effected a change in ownership of goods, an agreement to rescind must be in writing to comply with the statute of frauds. *West River Equipment Co. v. Holzworth Constr. Co.*, 134 M 582, 335 P 2d 298.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

13-907. (7569) Written contracts—how modified.**Acceleration Agreement**

Plaintiff, subcontractor, a bridge construction specialist, under road construction project, was entitled to part of acceleration payment under prime contract pursuant to agreement, where written contract was orally modified to provide for acceleration of certain items of work by plaintiff and for payment of additional sums to him; there was consideration for the modification; and such work was performed by plaintiff. *Dalakow v. Geery*, 132 M 457, 318 P 2d 253, 256.

Exception to Establish Fraud

In an action by the payees against the makers for the balance due on a renewal note, where there was fraud and partial failure of consideration and one of the makers testified that he did not know how to figure interest, the makers were not precluded from showing that the contract was different from what the writing showed it to be. *Jensen v. Franklin*, 135 M 341, 340 P 2d 832.

Operation and Effect

Parol evidence which tended to vary or alter the terms of a written chattel mortgage will be disregarded, where the chattel mortgage was plain and unambiguous and needed no construction. *First Nat. Bank of Plains v. Green Mt. Soil Conservation District*, 130 M 1, 293 P 2d 289.

Oral Termination

A written lease for term of years may be terminated by an oral agreement provided the conduct of the parties is consistent with such an agreement. *Rodgers v. Saunders*, — M —, 396 P 2d 817.

Oral Testimony Inadmissible

Trial court could have excluded evidence relating to a joint venture, none of which was in writing, as being designed to alter or vary the terms of a written agreement contrary to this section and section 93-401-13. *Barrett v. Morton*, 137 M 190, 351 P 2d 601, 605.

Parol Evidence of an Executed Oral Agreement

A written contract may be altered or modified by an executed oral agreement as provided by this section and parol evidence of alteration or modification may be heard. *Jenson v. Olson*, — M —, 395 P 2d 465, 469.

Prior Oral Contract

Evidence of an oral contract by the plaintiffs to build an addition to defendant's service station at no extra cost was inadmissible where a subsequent written contract for such construction was executed a month later. *Leigland v. McGaffick*, 135 M 188, 338 P 2d 1037.

Waiver of Contract Requirement

A requirement of written notice may be waived by parol, and a waiver of notice may be express or may be inferred from the conduct of the parties. *Flint v. Mincoff*, 137 M 549, 353 P 2d 340, 342.

Where a building contract required that all changes in building plans by the owner were to be in writing, and owner later made oral changes in the plans, the requirement of writing was deemed waived by the court. *Gramm v. Insurance Unlimited*, 141 M 456, 378 P 2d 662.

References

Cited in *West River Equipment Co. v. Holzworth Constr. Co.*, 134 M 582, 335 P 2d 298, 302.

TITLE 14—COOPERATIVES

- Chapter 1. Credit unions, 14-130 to 14-158.
2. Cooperative associations, 14-201, 14-204.
4. Cooperative marketing act, 14-422.
5. Rural Electric and Telephone Cooperative Act, 14-501 to 14-504, 14-508 to 14-510, 14-516, 14-527, 14-528, 14-530.

CHAPTER 1—CREDIT UNIONS

- Section 14-130. Short title.
14-131. Definitions.
14-132. Reports, examinations and fees.
14-133. Incorporation.
14-134. Certified copy of articles of incorporation as evidence.
14-135. Evidence of corporate character.
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14-152. Certain powers of supervisor.
14-153. Partial invalidity—right to amend.
14-154. Change in place of business.
14-155. Disposal of fees—fees for filing and recording articles of incorporation.
14-156. Conversion from state to federal credit union and from federal to state credit union.
14-157. Application of act.
14-158. Saving clause.

14-101 to 14-129. (6109.12 to 6109.39) Repealed.

Repeal

These sections (Secs. 1 to 28, Ch. 105, L. 1929; Sec. 1, Ch. 136, L. 1955; Sec. 1, Ch. 151, L. 1955; Sec. 1, Ch. 187, L. 1955;

Sec. 1, Ch. 115, L. 1959; Sec. 1, Ch. 142, L. 1959; Sec. 1, Ch. 117, L. 1961), relating to credit unions, were repealed by Sec. 30, Ch. 236, Laws 1963.

14-130. Short title. This act may be cited as the "Montana Credit Union Act."

History: En. Sec. 1, Ch. 236, L. 1963.

Title of Act

An act relating to credit unions; creating new sections to provide a comprehensive revision and consolidation of the laws of the state of Montana relating to credit

unions; regulating the incorporation, formation, operation and supervision of the affairs of credit unions; providing a saving clause; and repealing title 14, chapter 1, Revised Codes of Montana, 1947, as amended, and all other acts and parts of acts in conflict herewith.

14-131. Definitions. As used in this act. (1) The term "credit union" means a cooperative association organized in accordance with the provisions of this act for the purpose of promoting thrift among its members

and creating a source of credit for provident or productive purposes. Such organizations shall have perpetual succession and shall be organized under and governed solely by the provisions of this act;

(2) The term "department" means the department of banking, state of Montana; and

(3) The term "supervisor" means the state examiner, ex officio superintendent of banks, state of Montana.

History: En. Sec. 2, Ch. 236, L. 1963.

14-132. Reports, examinations and fees. Credit unions shall be under the supervision of the supervisor and shall make financial reports to him as and when he may require, but at least semiannually. Each credit union shall be subject to a regular examination annually by, and for this purpose shall make its books and records accessible to, any person designated by the supervisor; except that special examinations may be made more frequently where there is clear and incontrovertible evidence of immediate danger or damage to, or impairment of members' shareholdings. Fees assessed for examinations shall not exceed the following schedule: The first \$25,000 of assets to be assessed at \$.22 per \$100 of assets, the next \$75,000 of assets to be assessed at \$.20 per \$100 of assets, the next \$100,000 of assets to be assessed at \$.18 per \$100 of assets, the next \$300,000 of assets to be assessed at \$.14 per \$100 of assets, the next \$500,000 of assets to be assessed at \$.10 per \$100 of assets, and assets in excess of \$1,000,000 shall be assessed at \$.03 per \$100 of assets. The minimum fee chargeable shall be \$17.

History: En. Sec. 3, Ch. 236, L. 1963.

14-133. Incorporation. Whenever any number of persons not less than seven (7) who are domiciled in this state shall desire to incorporate a credit union having for its object the conduct and operation of such organization as defined in this act, they shall prepare and file articles of incorporation to that effect in the manner in this act specified; such articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

(1) The name, which shall not be the same or too closely resembling that in use by any existing corporation established under the laws of the state. The words "credit union" shall form a part of the name and no person, corporation, copartnership, association, or other form of organization shall be entitled to use a name employing said combination of words except as provided in section 8 [14-137] of this act.

(2) The principal office, or place of business which shall be within this state.

(3) The term of existence of the organization, which shall be perpetual.

(4) The par value of shares of the credit union, which shall be five dollars (\$5) each.

(5) A provision that such credit union shall be organized under this act for the purposes set forth therein.

(6) The names, occupations and addresses of the subscribers to the articles of incorporation and the number of shares subscribed by each.

The articles of incorporation shall be presented to the supervisor with the by-laws of the proposed credit union, and he shall within thirty (30) days of the receipt of said articles of incorporation and by-laws, determine whether they conform with the provisions of this act, and whether or not the organization of the credit union would benefit its members and be consistent with the purposes of this act. Thereupon, the supervisor shall promptly notify the applicant of his decision. If it is favorable, the supervisor shall, at the time of issuing such notice, attach his written approval to the articles of incorporation. If it is unfavorable, the supervisor shall, at the time of issuing such notice, state his reasons therefor.

Said articles of incorporation shall then be filed with the secretary of state who, upon payment of the filing fees therefor, shall issue a certificate of incorporation over the great seal of the state of Montana; and a copy thereof, certified by the secretary of state, shall be filed in the office of the county clerk of the county in which the principal place of business of the credit union is located.

History: En. Sec. 4, Ch. 236, L. 1963.

14-134. Certified copy of articles of incorporation as evidence. A certified copy of articles of incorporation and certificate of merger, filed in pursuance to this act shall be received in all courts and other places as prima facie evidence of the facts therein stated.

History: En. Sec. 5, Ch. 236, L. 1963.

14-135. Evidence of corporate character. The certificate issued by the secretary of state in pursuance of this act setting forth that the credit union has fully complied with the provisions of this act and is lawfully authorized to transact business in this state shall be admitted in all courts of this state, and shall be prima facie evidence of the corporate character and capacity of such credit union, and of its right to transact business in this state excepting in an action prosecuted by the state in the nature of quo warranto.

History: En. Sec. 6, Ch. 236, L. 1963.

14-136. By-laws. In order to simplify the organization of credit unions the supervisor shall from time to time cause to be prepared a form of articles of incorporation and a form of by-laws, consistent with this act, which shall be used by credit union incorporators, and shall be supplied to them on request. At the time of presenting the articles of incorporation the incorporators shall also submit proposed by-laws to the supervisor for his approval.

The by-laws may be amended in the manner provided therein, except that no amendments thereto shall thereafter become operative until they have been approved by the supervisor.

History: En. Sec. 7, Ch. 236, L. 1963.

14-137. Restriction on use of words "credit union" in name. Any person, corporation, copartnership, or association, except corporations doing

business as credit unions, or a credit union organized under the provisions of this act, or under the Federal Credit Union Act or except a central organization of credit unions to which all the credit unions in this state shall be eligible and except chapters of credit unions to which all the credit unions in given areas shall be eligible, using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise, as conducting business as a credit union, shall be fined no more than five hundred dollars (\$500) or imprisoned no more than one year or both; and shall be enjoined from using such words in its name.

History: En. Sec. 8, Ch. 236, L. 1963.

14-138. Powers. A credit union shall have perpetual succession in its corporate name during its existence and shall have power:

- (1) to make contracts;
- (2) to sue and be sued;
- (3) to adopt and use a common seal and alter the same at pleasure;
- (4) to receive the savings of its members as payment on shares (including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within the membership);
- (5) to make loans to members for provident or productive purposes;
- (6) to make loans to a cooperative society or other organization having membership in the credit union;
- (7) to deposit its funds in state and national banks the accounts of which are insured by the Federal Deposit Insurance Corporation;
- (8) to an extent which shall not exceed twenty-five per centum (25%) of its members' shareholdings, invest in the paid-up shares of building and loan associations the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, or in loans to and shares of other credit unions, or organizations of credit unions, or in any investment legal for savings banks or for trust funds in the state;
- (9) to borrow money as hereinafter indicated;
- (10) to own, hold, and dispose of real and personal property only as may be necessary or incidental to its operations;
- (11) to issue shares in the name of a minor in such a manner as the by-laws may provide;
- (12) to purchase insurance on the lives of its members in an amount equal to their respective share and loan balances or either or all of them;
- (13) to assess charges to members in accordance with the by-laws for failure to meet promptly their obligations to the credit union;
- (14) to impress a lien upon the shares, dividends and accumulation of any member to the extent of any loans made to him directly or indirectly, or on which he is co-maker and for any dues or fines payable by him [; and].

History: En. Sec. 9, Ch. 236, L. 1963.

of the section to indicate apparent superfluity.

Compiler's Note

The compiler has inserted brackets around the semicolon and word at the end

14-139. Membership. Credit union membership shall consist of the incorporators and such other persons as may be elected to membership and subscribe to at least one share, pay an initial installment thereon and any such entrance fee as may be provided for in the by-laws. Organizations (incorporated or otherwise) composed for the most part of the same general group as the credit union membership may be members. Credit union membership shall be limited to groups having a common bond of occupation or association. Shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans, or hold office, unless he is within the field of membership and is a qualified member.

History: En. Sec. 10, Ch. 236, L. 1963.

14-140. Membership meetings. The fiscal year of all credit unions shall end December 31. The regular annual and special meetings may be held in the manner indicated in the by-laws. At all meetings a member shall have but a single vote whatever his shareholdings. No member shall be entitled to vote by proxy, but a member other than a natural person may vote through an agent designated for the purpose.

History: En. Sec. 11, Ch. 236, L. 1963.

14-141. Management. The business affairs of a credit union shall be managed by a board of not less than five (5) directors, and a credit committee of not less than three (3) members, all to be elected at the annual members' meeting by and from the members, and by a supervisory committee of three (3) members, one (1) of whom may be a director other than the treasurer. Two (2) members of the supervisory committee shall be elected at the annual members' meeting by and from the members and one (1) member shall be appointed by the board. Any vacancy occurring in the supervisory committee shall be filled by appointment by the board, until successors (in the case of the elected members) elected at the next annual meeting have qualified. All members of the board and of such committees shall hold office for such terms, respectively, as the by-laws may provide; provided that the said terms shall be for not less than one (1) nor more than three (3) years, except that the term of the board's appointee to the supervisory committee shall be for one (1) year. A record of the names and addresses of the members of the board and such committees and of the officers of the credit union shall be filed with the department within ten (10) days after their election or appointment. No member of the board or of either such committee shall, as such, be compensated.

History: En. Sec. 12, Ch. 236, L. 1963.

14-142. Officers. At their first meeting after the annual meeting of the members, the directors shall elect a president, one or more vice presidents, a secretary, and a treasurer, who shall be the executive officers of the credit union. The offices of secretary and treasurer may be held by the same person. All executive officers shall be chosen from among the elected directors except that the secretary-treasurer or treasurer (depending on

whether or not these offices are combined) may be appointed by the directors from outside the membership of the board of directors, in which case such office shall be designated as an executive office and the person holding such office shall be a member of the board, ex officio, without vote. The duties of the officers shall be as determined by the by-laws, except that the treasurer shall be the general manager of the credit union. Before the treasurer shall enter upon his duties he shall give bond with good and sufficient surety, in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the supervisor, conditioned upon the faithful performance of his trust.

History: En. Sec. 13, Ch. 236, L. 1963.

14-143. Directors. The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the credit union. Minutes of all such meetings shall be kept. Among other things they shall act upon applications for membership; require any officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined by the board of directors in compliance with regulations prescribed from time to time by the supervisor, and authorize the payment of the premium or premiums therefor from the funds of the credit union; fill vacancies in the board and in the credit committee until successors elected at the next annual meeting have qualified; have charge of investments other than loans to members; determine from time to time the maximum number of shares that may be held by an individual; subject to the limitations of this act, determine the interest rates on loans and the maximum amount which may be loaned with or without security to any member; subject to such regulations as may be issued by the supervisor, authorize an interest refund to members of record at the close of business on December 31 in proportion to the interest paid by them during that year; and provide for compensation of necessary clerical and auditing assistance requested by the supervisory committee, and of loan officers appointed by the credit committee. A membership officer appointed by the board from among the members of the credit union, other than the treasurer, an assistant treasurer, or a loan officer, any [may] be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that such membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the by-laws or the board may require.

History: En. Sec. 14, Ch. 236, L. 1963.

14-144. Credit committee. The credit committee shall hold such meetings as the business of the credit union may require and not less frequently than once a month to consider applications for loans. Reasonable notice of such meetings shall be given to all members of the committee. No loan shall be made unless it is approved by a majority of the entire committee and by all members of the committee who are present at the

meeting at which the application is considered; except that the credit committee may appoint one or more loan officers, and delegate to him or them the power to approve loans within limits prescribed by the committee. Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by him within seven (7) days of the date of the filing of the application therefor. All loans not approved by a loan officer shall be acted upon by the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by him in his capacity as a loan officer. Not more than one (1) member of the credit committee may be appointed as a loan officer. Applications for loans shall be made on forms prepared by such committee, which shall set forth the purpose for which the loan is desired, the security, if any, and such other data as may be required. For the purposes of this section an assignment of shares, or the endorsement of a note shall be deemed security.

History: En. Sec. 15, Ch. 236, L. 1963.

14-145. Supervisory committee. The supervisory committee shall make or cause to be made, at least quarterly, an examination of the affairs of the credit union, shall make or cause to be made a report of its quarterly examination to the board of directors; shall make or cause to be made an annual audit, a report of which shall be submitted to the members at the next annual meeting of the credit union; may suspend by a unanimous vote any officer of the credit union, or any member of the credit committee, or of the board of directors, until the next members' meeting, which members' meeting shall be held not less than seven (7) nor more than fourteen (14) days after such suspension and at which meeting such suspension shall be acted upon by the members; and may call by a majority vote a special meeting of the shareholders to consider any violation of this act, the certificate of incorporation or the by-laws, or any practice of the credit union deemed by the supervisory committee to be unsafe or unauthorized. Any member of the supervisory committee may be suspended by the board of directors. The members shall decide, at a meeting held not less than seven (7) nor more than fourteen (14) days after any such suspension, whether the suspended committee member shall be removed from or restored to the supervisory committee. The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once every two (2) years. As used in this section, the term "passbook" shall include any book, statement of account, or other record setting forth the members' transactions with the credit union.

History: En. Sec. 16, Ch. 236, L. 1963.

14-146. Rates of interest. Interest rates on loans made by a credit union shall not exceed one per centum (1%) per month on unpaid principal balances, inclusive of all charges incident to making the loan. This rate may also be stated as twelve per centum (12%) simple interest per annum.

History: En. Sec. 17, Ch. 236, L. 1963.

14-147. Power to borrow. A credit union may borrow from any source in total sum which shall not exceed fifty per centum (50%) of its total assets, after the deduction of the "notes payable account."

History: En. Sec. 18, Ch. 236, L. 1963.

14-148. Loans to members. A credit union may loan to members. Loans must be for provident or productive purposes and are made subject to the conditions contained in the by-laws. A borrower may repay his loan in whole or in part, during regular business hours on any day the credit union office is open for business and no penalty or minimum charge may be imposed for payments received in advance of schedule or for any loan paid in full prior to the maturity date. Loans to a director or member of the supervisory or credit committee shall not exceed the amount of his holdings in the credit union as represented by shares thereof plus the total unencumbered and unpledged shareholdings in the credit union of any member or members pledged as security for the obligation of such director or committee member. No director or member of the supervisory or credit committee shall endorse for borrowers.

History: En. Sec. 19, Ch. 236, L. 1963.

14-149. Reserves. Any entrance fee and charges provided by the by-laws and twenty per centum (20%) of the net earnings of each dividend period, before the declaration of any dividends, shall be set aside as a regular reserve against losses on bad loans and such other losses as may be specified in the by-laws in accordance with regulations prescribed under this act. This reserve shall be kept liquid and intact and not loaned out to members; provided, however, that when the regular reserve thus established shall equal ten per centum (10%) of the total amount of members' shareholdings, no further transfer of net earnings to such regular reserve shall be required except that such amounts not in excess of twenty per centum (20%) of the net earnings as may be needed to maintain this ten per centum (10%) ratio shall continue to be transferred. In addition to such regular reserves, special reserves to protect the interest of members shall be established when required (1) by regulation, or (2) in any special case when found by the supervisor to be necessary for that purpose.

History: En. Sec. 20, Ch. 236, L. 1963.

14-150. Dividends. Annually or semiannually, and after provision for the required reserve, and/or special reserves, the board of directors may declare a dividend to be paid from the remaining net earnings. Such dividends shall be paid on all paid-up shares outstanding at the end of the period for which the dividend is declared. Shares which become fully paid up during such dividend period and are outstanding at the close of the period shall be entitled to a proportional part of such dividend. Dividend credit for a month may be accrued on shares which are or become fully paid up during the first ten (10) days of that month. As the by-laws may require, dividend declarations made by the board may be subject to ratification by the members at each annual meeting and in the case of dividend declaration for the period ending December 31, the board may recommend

this declaration to the members at the annual meeting rather than declaring same.

History: En. Sec. 21, Ch. 236, L. 1963.

14-151. Expulsion—withdrawal. A member may be expelled by a two-thirds ($\frac{2}{3}$) vote of the members present at a special meeting called to consider the matter but only after an opportunity has been given him to be heard. Any member may withdraw from the credit union at any time but notice of withdrawal may be required. All amounts paid on shares of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, as funds become available and after deducting all amounts due from the member to the credit union, be paid to him. Payment of any part or all of such accounts to any of the joint tenants or to a minor shall, to the extent of such payment, be valid and discharge the liability of the credit union to all joint tenants, to the minor, parent or guardian in respect to such share account.

The credit union may require sixty (60) days notice of intention to withdraw shares. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

History: En. Sec. 22, Ch. 236, L. 1963.

14-152. Certain powers of supervisor. (1) The supervisor may prescribe rules and regulations for the administration of the act (including, but not by way of limitation, the merger, consolidation, and dissolution of credit unions organized under this act).

(2) Any credit union may, with the approval of the supervisor, and in accordance with such uniform rules and regulations as he shall make and promulgate be merged with another credit union, provided the membership of the one credit union is within the field of membership of the other, under the existing certificate of incorporation of such other credit union, pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, and approved by the affirmative vote of a majority of the members of each such credit union, either at meetings of the members, duly called for such purpose or in writing. All property, property rights and interest of the credit union so merging shall upon such merger be transferred to and vested in the credit union under whose certificate of incorporation the merger is effected without deed, endorsement, or other instrument of transfer, and the debts and obligations of the credit union so merging shall be deemed to have been assumed by the credit union under whose certificate of incorporation the merger is effected, and thereafter the certificate of incorporation of the credit union so merging shall be null and void and it shall cease to exist. Upon payment of the filing fees provided in section 26 [14-155] hereof, the supervisor shall file the certificate of merger with the secretary of state, and a copy thereof, certified by the secretary of state, shall be filed in the office of the county clerk of the county in which the principal place of business of the merged credit union is located. This section shall be construed, whenever possible to permit a credit union incorporated under any

other act to merge with one incorporated under this act, or to permit one incorporated under this act to merge with one incorporated under any other act.

(3) The proposition of voluntary dissolution may be considered at a membership meeting especially called by a four-fifths ($4/5$) vote of the board of directors of the credit union on a date set by said board for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed with the secretary before such date). Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty (30) days and not less than ten (10) days prior to such date. At the same time, a copy of said notice shall also be mailed to the supervisor. Approval of the proposition for voluntary dissolution shall be by the affirmative vote of a majority of the members, in person or in writing. A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the supervisor within five (5) days after the vote is taken, and there shall be included with the affidavits, a list of the names of the directors and officers of the credit union together with their addresses. If the proposition for voluntary dissolution is approved by such vote, the credit union shall thereupon immediately cease to do business except for the purpose of liquidation.

(4) (a) The supervisor may suspend or revoke the certificate of incorporation of any credit union, or place the same in involuntary liquidation and appoint a liquidating agent therefore [therefor], upon his finding that the credit union is bankrupt or insolvent, or has violated any of the provisions of its certificate of incorporation, its by-laws, this act, or any regulations issued thereunder.

(b) The supervisor through such persons as he shall designate, may examine any credit union in voluntary liquidation and, upon his finding that such voluntary liquidation is not being conducted in an orderly or efficient manner or in the best interests of its members, may after holding a hearing or giving adequate opportunity for a hearing, order such credit union to correct such condition and shall grant it not less than sixty (60) days within which to comply, and failure to do so shall afford the supervisor grounds for terminating such voluntary liquidation and place such credit union in involuntary liquidation and appoint a liquidating agent therefor.

(c) Such liquidating agent shall have power and authority, subject to the control and supervision of the supervisor and under such rules and regulations as the supervisor may prescribe,

(i) To receive and take possession of the books, records, assets, and property of every description of the credit union in liquidation, to sell, enforce collection of, and liquidate all such assets and property, to compound all bad or doubtful debts, and to sue in his own name or in the name of the credit union in liquidation, and defend such actions as may be brought against him as liquidating agent or against the credit union;

(ii) To receive, examine, and pass upon all claims against the credit union in liquidation, including claims of members on shares;

(iii) To make distribution and payment to creditors and members as their interests may appear; and

(iv) To execute such documents and papers and to do such other acts and things which he may deem necessary or desirable to discharge his duties hereunder.

(d) Subject to the control and supervision of the supervisor and under such rules and regulations as the supervisor may prescribe, the liquidating agent of a credit union in involuntary liquidation shall

(i) Cause notice to be given to creditors and members to present their claims and make legal proof thereof, which notice shall be published once a week in each of three (3) successive weeks in a newspaper of general circulation in the county in which the credit union in liquidation maintained an office for the transaction of business on the date it ceased unrestricted operations; except that whenever the aggregate book value of the assets and property of a credit union in involuntary liquidation is less than \$10,000 unless the supervisor shall find that its books and records do not contain a true and accurate record of its liabilities, he shall declare such credit union in liquidation to be a "no publication" liquidation, and publication of notice to creditors and members shall not be required in such case;

(ii) From time to time make a ratable dividend on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction and, after the assets of such credit union have been liquidated, make further dividends on all claims previously proved or adjudicated, and he may accept in lieu of a formal proof of claim on behalf of any creditor or member the statement of any amount due to such creditor or member as shown on the books and records of the credit union; but all claims not filed before payment of the final dividend shall be barred and claims rejected or disallowed by the liquidating agent shall be likewise barred unless suit be instituted thereon within three (3) months after notice of rejection or disallowance; and

(iii) In a "no publication" liquidation, determine from all sources available to him, and within the limits of available funds of the credit union, the amounts due to creditors and members, and after sixty (60) days shall have elapsed from the date of his appointment distribute the funds of the credit union to creditors and members ratably and as their interests may appear.

(e) Upon certification by the liquidating agent in the case of an involuntary liquidation, and upon such proof as shall be satisfactory to the supervisor in the case of a voluntary liquidation, that distribution has been made and that liquidation has been completed, as provided herein, the supervisor shall cancel the certificate of incorporation of such credit union by issuing a certificate of dissolution on form prescribed by him, and file the same with the secretary of state, and a copy thereof shall be filed in the office of the county clerk of the county in which the principal place of business of the credit union is located; but the corporate existence

of the credit union shall continue for a period of three (3) years from the date of such cancellation of its certificate of incorporation, during which period the liquidating agent, or his duly appointed successor, or such persons as the supervisor shall designate, may act on behalf of the credit union for the purpose of paying, satisfying, and discharging any existing liabilities or obligations, collecting and distributing its assets, and doing all other acts required to adjust and wind up its business and affairs, and it may sue and be sued in its corporate name.

(5) After the expiration of eight (8) years from the date of cancellation of the certificate of incorporation of a credit union the supervisor may, in his discretion, destroy any or all books and records of such credit union in his possession or under his control.

(6) The supervisor is authorized and empowered to execute any and all functions and perform any and all duties vested in him hereby, through such persons as he shall designate or employ; and he may delegate to any person or persons, including any institution operating under the general supervision of the department, the performance and discharge of any authority, power, or function vested in him by this act.

(7) Any officer or employee of the department is authorized, when designated for the purpose by the supervisor to administer oaths and affirmations and to take affidavits and depositions touching upon any matter within the jurisdiction of the department as related to this act.

(8) The supervisor is authorized, empowered, and directed to require that every person appointed or elected by any credit union to any position requiring the receipt, payment, or custody, of money or other personal property owned by a credit union, or in its custody or control as collateral or otherwise, give bond in a corporate surety company licensed to do business in the state of Montana. Any such bond or bonds shall be in a form approved by the supervisor with a view to providing surety coverage to the credit union with reference to loss by reason of acts of fraud or dishonesty including forgery, theft, embezzlement, wrongful abstraction, or misapplication on the part of the person, directly or through connivance with others, and such other surety coverages as the supervisor may determine to be reasonably appropriate or as elsewhere required by this act. Any such bond or bonds shall be in such an amount in relation to the money or other personal property involved or in relation to the assets of the credit union as the supervisor may from time to time prescribe by regulation for the purpose of requiring reasonable coverage. In lieu of individual bonds the supervisor may approve the use of a form of schedule or blanket bond which covers all of the officers and employees of a credit union whose duties include the receipt, payment, or custody of money or other personal property for or on behalf of the credit union. The supervisor may also approve the use of a form of excess coverage bond whereby a credit union may obtain an amount of coverage in excess of the basic surety coverage.

History: En. Sec. 23, Ch. 236, L. 1963.

14-153. Partial invalidity—right to amend. (1) If any provision of this act, or the application thereof to any person or circumstance, is held

invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(2) The right to alter, amend, or repeal this act or any part thereof, or any certificate of incorporation issued pursuant to the provisions of this act, is expressly reserved.

History: En. Sec. 24, Ch. 236, L. 1963.

14-154. Change in place of business. A credit union may change its local business address on written notice to the supervisor.

History: En. Sec. 25, Ch. 236, L. 1963.

14-155. Disposal of fees—fees for filing and recording articles of incorporation. All fees and expenses collected by the supervisor from credit unions for examination shall be deposited with the state treasurer for the credit of the general fund. The secretary of state shall charge a flat fee of fifteen dollars (\$15) for filing and recording the articles of incorporation of credit unions and issuing the certificate of incorporation thereon, and ten dollars (\$10) for filing certificate of merger or dissolution and issuing certificate thereon, which fees shall be in lieu of all other filing fees.

History: En. Sec. 26, Ch. 236, L. 1963.

14-156. Conversion from state to federal credit union and from federal to state credit union. (1) A state credit union may be converted into a federal credit union under the laws of the United States by complying with the following requirements:

(a) The proposition for such conversion shall first be approved by a majority of the directors of the credit union, and a date set for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed on or before such date). Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty (30) nor less than seven (7) days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of a majority of the members, in person or in writing.

(b) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the department within ten (10) days after the vote is taken.

(c) Promptly after the vote is taken and in no event later than ninety (90) days thereafter, if the proposition for conversion was approved by such vote, the credit union shall take such action as may be necessary under the applicable federal laws to make it a federal credit union, and within ten (10) days after receipt of the federal credit union certificate of incorporation there shall be filed with the department a copy of the certificate of incorporation thus issued. Upon such filing the credit union shall cease to be a state credit union.

(d) Upon ceasing to be a state credit union, such credit union shall no longer be subject to any of the provisions of this act. The successor federal credit union shall be vested with all of the assets and shall con-

tinue responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place.

(2) (a) A federal credit union, organized under the laws of the United States may be converted into a state credit union by:

(i) Complying with all federal requirements requisite to enabling it to convert to a state credit union or to cease being federal credit union,

(ii) Filing with the department proof of such compliance, satisfactory to the supervisor, and

(iii) Filing with the department articles of incorporation and by-laws as required by this act.

(b) When the supervisor has been satisfied that all of such requirements, and all other requirements of this act, have been complied with, the supervisor shall approve the articles of incorporation and by-laws. Upon such approval, the federal credit union shall become a state credit union as of the date it ceases to be a federal credit union. The state credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place.

History: En. Sec. 27, Ch. 236, L. 1963.

14-157. Application of act. Nothing contained in this act shall apply to persons or corporations engaged in the business of loaning money under the provisions of the banking, building and loan, and other laws of the state of Montana. This act to apply to and govern only those doing business as credit unions.

History: En. Sec. 28, Ch. 236, L. 1963.

14-158. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

History: En. Sec. 29, Ch. 236, L. 1963.

Repealing Clause

Section 30 of Ch. 236, Laws 1963 read "Repeal. This act expressly repeals Title

14, Chapter 1 of the Revised Codes of Montana, 1947, as amended and all other acts and parts of acts in conflict herewith."

CHAPTER 2—COOPERATIVE ASSOCIATIONS

Section 14-201. Incorporation of cooperative associations.

14-204. Certificate of incorporation—amendment of articles of incorporation.

14-201. (6375) Incorporation of cooperative associations. Whenever any number of persons, not less than three, nor more than seven, may desire to become incorporated as a cooperative association for the purpose of trade, or of prosecuting any branch of industry, or the purchase and distribution of commodities for consumption, or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands, duly acknowledged by a notary public, in

the manner provided for the acknowledgment of deeds, setting forth the name of the proposed corporation, its capital stock, its location, and duration of the association, and the particular branch or branches of industry which they intend to prosecute, which statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of twenty dollars (\$20.00).

History: En. Sec. 870, Civ. C. 1895; re-en. Sec. 4210, Rev. C. 1907; re-en. Sec. 6375, R. C. M. 1921; amd. Sec. 1, Ch. 273, L. 1955; amd. Sec. 2, Ch. 117, L. 1961. Cal. Civ. C. Sec. 653b.

Amendment

The 1961 amendment increased the fee specified at the end of the section from \$5.00 to \$20.00.

14-204. (6378) Certificate of incorporation—amendment of articles of incorporation. The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the subscription list, a copy of the by-laws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be sworn to by at least a majority of the commissioners, and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office, in and about the organization, and duly authenticated, under his hand and seal of the state, for which he shall receive the sum of twenty dollars (\$20.00), and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located. Upon the filing of said certified copy, the association shall be deemed to be fully organized and may proceed to business. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall first be approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth such amendment shall be executed and acknowledged on behalf of the association by its president or vice-president, and its corporate seal affixed thereto and attested by its secretary. Such certificate shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation, for which he shall receive the sum of ten dollars (\$10.00), and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R. C. M. 1921; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961.

Amendment

The 1961 amendment increased the fee specified in the second sentence from \$5.00 to \$20.00 and the fee specified in the last sentence from \$5.00 to \$10.00.

CHAPTER 3—COOPERATIVE AGRICULTURAL CORPORATIONS AND DISTRICTS

14-302. (6398) Petition—contents and filing—bond.

Cross-Reference

Application of Montana Rules of Civil

Procedure to proceeding for incorporation,
see M. R. Civ. P., Rule 81(a), Table A.

14-319. (6415) Creation of debt—passage of resolution.

Cross-Reference

Application of Montana Rules of Civil
Procedure to proceeding for approval of

indebtedness, see M. R. Civ. P., Rule 81
(a), Table A.

CHAPTER 4—COOPERATIVE MARKETING ACT

Section 14-422. Filing fees.

14-422. (6449) Filing fees. For filing articles of incorporation and receiving a certificate of incorporation an association organized hereunder shall pay to the secretary of state, forty dollars (\$40.00); and for filing an amendment to the articles and receiving a certificate of amendment, ten dollars (\$10.00).

History: En. Sec. 22, Ch. 233, L. 1921;
re-en. Sec. 6449, R. C. M. 1921; amd. Sec.
4, Ch. 117, L. 1961.

Amendment

The 1961 amendment inserted the words
“and receiving a certificate of incorpora-

tion” in the first clause; increased the fee
specified therein from \$5.00 to \$40.00; in-
serted the words “and receiving a certi-
ficate of amendment” in the final clause;
and increased the fee specified therein
from \$2.50 to \$10.00.

CHAPTER 5—RURAL ELECTRIC AND TELEPHONE COOPERATIVE ACT

Section 14-501. Act, how cited.

14-502. Purpose.

14-503. Powers.

14-504. Name.

14-508. Members.

14-509. Board of trustees.

14-510. Voting districts.

14-516. Conversion of existing corporations.

14-527. Fees.

14-528. Exemption from excise taxes—license fee.

14-530. Definitions.

14-501. Act, how cited. This act may be cited as the “Rural Electric and Telephone Cooperative Act.”

History: En. Sec. 1, Ch. 172, L. 1939;
amd. Sec. 1, Ch. 80, L. 1957.

Amendment

The 1957 amendment added the words
“and telephone” to the name of this act.

14-502. Purpose. Cooperative, nonprofit, membership corporations may be organized under this act for the following purposes:

(a) For the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, in which electrical current and service are not otherwise available, from existing facilities and plants;

(b) For the purpose of making generally available in rural areas adequate telephone service through the improvement and expansion of existing telephone facilities and the construction and operation of such additional facilities as are required to assure the availability of such service to

the widest practicable number of rural users thereof, provided that non-duplication of lines, facilities or systems providing reasonably adequate service will result therefrom.

Corporations organized under this act and corporations which become subject to this act in the manner hereinafter provided are hereinafter referred to as "cooperatives."

History: En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957.

Amendment

The 1957 amendment subdivided this section into (a) and (b) subdivisions; inserted the words "for the following purposes" at the end of the introduction; in subd. (a) substituted "are" for "is"; added subd. (b), and began a new paragraph with the word "Corporations."

Electric Service

A rural electric co-operative did not have a lawful right to service an addition contemplated, planned, promoted and organized as a subdivision to a city. *Montana Power Co. v. Park Electric Co-operative*, 140 M 293, 371 P 2d 1, 4.

An electric power company could maintain an action to restrain a rural electric co-operative from supplying electric service to customers in an addition to a city. *Montana Power Co. v. Park Electric Co-operative*, 140 M 293, 371 P 2d 1, 4.

The right of a co-operative electric company to service nonmembers not in excess of 10 per cent of the total number of members is subject to the rural areas limitation and where a rural area served by a co-op is annexed by a city of more than 3,500 population the co-op may continue to serve existing customers in the annexed area but is not authorized to extend its services to other customers there. *Montana Power Co. v. Vigilante Electric Cooperative, Inc.*, 143 M 119, 387 P 2d 718.

14-503. Powers. A cooperative shall have power:

- (a) To sue and be sued, in its corporate name;
- (b) To have perpetual existence;
- (c) To adopt a corporate seal and alter the same at pleasure;
- (d) To become a member in one or more other cooperatives or corporations or to own stock therein;
- (e) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to own, hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities), as defined by law, lands, buildings, structures, dams, plants and equipment, and any and all kinds or classes of real or personal property whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;
- (f) To purchase or otherwise acquire, and to own, hold, use and exercise and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber, franchises, rights, privileges, licenses, rights of way and easements;
- (g) To borrow money and otherwise contract indebtedness, and to issue notes, bonds and other evidences of indebtedness therefor, and to secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues or income;
- (h) To construct, maintain and operate electric transmission and distribution lines, or telephone lines, facilities or systems, along, upon,

under and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly-owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems, or telephone lines, facilities or systems;

(i) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems, or telephone lines, facilities or systems;

(j) To conduct its business and exercise any or all of its powers within or without this state;

(k) To adopt, amend and repeal by-laws;

(l) In the case of corporations organized under the provisions of paragraph (a) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act:

(1) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members;

(2) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises and installing therein electrical and plumbing fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such electrical and plumbing fixtures, appliances, apparatus and equipment, and to accept, or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(3) To make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants.

(m) In the case of corporations organized under the provisions of paragraph (b) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act:

(1) To improve and expand existing telephone lines, facilities and systems in rural areas and to construct, acquire, operate and furnish such additional telephone lines, facilities, and systems, as are required to assure the availability of adequate telephone service to the widest practicable number of rural users thereof, provided that no duplication of lines, facilities or systems providing reasonably adequate service will result therefrom.

(2) To make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises for telephone service, and installing

therein telephone fixtures, appliances, apparatus and equipment of any and all kinds and character, and in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such telephone fixtures, appliances, apparatus and equipment, and to accept, or otherwise acquire, and to sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(n) To do and perform any and all other acts and things, and to have and exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

History: En. Sec. 3, Ch. 172, L. 1939; amd. Sec. 3, Ch. 80, L. 1957.

Amendment

The 1957 amendment re-subdivided and rewrote this section. For section prior to amendment see parent volume.

Action to Determine Rights

Where a controversy existed between a rural electric co-operative and an electric power company as to the right of the co-operative to supply service to an addition to the city, the co-operative could have brought an action under sections 93-8901 to 93-8916 (Uniform Declaratory Judgments Act) to determine its legal position before proceeding to install facilities to service the

addition. *Montana Power Co. v. Park Electric Co-operative*, 140 M 293, 371 P 2d 1, 6.

Underground Installations

A power company which operated an electric line along the edge of an addition to a city, was not required to pay for facilities and underground installations constructed by a rural electric co-operative in such addition despite protests of power company. *Montana Power Co. v. Park Electric Co-operative*, 140 M 293, 371 P 2d 1, 6.

References

Montana Power Co. v. Vigilante Electric Cooperative, Inc., 143 M 119, 387 P 2d 718.

14-504. Name. The name of each cooperative shall include the words "electric" or "telephone" and "cooperative," and the abbreviation "Inc.," provided, however, such limitations shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of, or authorized to transact business in, this state. The words "electric" or "telephone" and "cooperative" shall not both be used in the name of any corporation organized under the laws of, or authorized to transact business in, this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this act.

History: En. Sec. 4, Ch. 172, L. 1939; amd. Sec. 4, Ch. 80, L. 1957.

Amendment

The 1957 amendment inserted the words "or telephone" both times they appear in this section.

14-508. Members. (a) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy or telephone service furnished by the cooperative when such electric energy or telephone service shall be available through its facilities. The by-laws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or

refuse to use electric energy or telephone service made available by the cooperative or if electric energy or telephone service shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof. Membership in the cooperative shall not be transferable, except as provided in the by-laws. The by-laws may prescribe additional qualifications and limitations in respect to membership.

(b) An annual meeting of the members shall be held at such time as shall be provided in the by-laws.

(c) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than ten per centum (10%) of the members, or by the president.

(d) Meetings of members shall be held at such place as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held in the city or town in which the principal office of the cooperative is located.

(e) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten (10) nor more than twenty-five (25) days before the date of the meeting.

(f) Five per centum (5%) of all members present in person shall constitute a quorum for the transaction of business at all meetings of the members, but the by-laws may prescribe the presence of a greater percentage of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(g) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person, but, if the by-laws so provide, may also be by proxy or by mail, or both. If the by-laws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as proxy for more than three (3) members at any meeting of the members.

History: En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957.

"or telephone service" each time they appear in subd. (a) and in the last sentence of said subdivision substituted the word "to" for "of."

Amendment The 1957 amendment inserted the words

14-509. Board of trustees. (a). * * * [Same as parent volume.]

(b) The trustees of a co-operative named in any articles of incorporation, consolidation, merger or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors shall have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees, who may serve for one (1), two (2) or three (3) year terms. Each trustee shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

(c) * * * [Same as (d) in parent volume.]

(d) * * * [Same as (e) in parent volume.]

(e) * * * [Same as (f) in parent volume.]

History: En. Sec. 9, Ch. 172, L. 1939;
amd. Sec. 1, Ch. 208, L. 1965.

Amendment

The 1965 amendment substituted "who may serve for one (1), two (2) or three (3) year terms" for "to hold office until

the next following annual meeting of the members, except as hereinafter otherwise provided" at the end of the second sentence of subsection (b); deleted a former subsection (c), for text of which see parent volume; and appropriately redesignated the succeeding subsections.

14-510. Voting districts. Notwithstanding any other provisions of this act, the by-laws may provide that the territory in which a cooperative supplies electric energy or telephone service to its members shall be divided into two or more voting districts and that in respect to each such voting district (1) a designated number of trustees shall be elected by the members residing therein, or (2) a designated number of delegates shall be elected by the members residing therein, or (3) both such trustees and delegates shall be elected by such members. In any such case the by-laws shall prescribe the manner in which such voting districts and the members thereof, and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees. No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

History: En. Sec. 10, Ch. 172, L. 1939;
amd. Sec. 6, Ch. 80, L. 1957.

Amendment

The 1957 amendment inserted the

words "or telephone service" and substituted the word "to" for "of" which appeared between the words "respect" and "each" in the first sentence.

14-516. Conversion of existing corporations. Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy or telephone service in rural areas may become subject to this act with the same effect as if originally organized under this act by complying with the following requirements:

(a) The proposition for the conversion of such corporation into a cooperative under this act and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this act and shall state: (1) the name of the corporation prior to its conversion into a cooperative under this act; (2) the address of the principal office of such corporation; (3) the date of the filing of its articles of incorporation in the office of the secretary of state; (4) the statute or statutes under which such corporation was organized; (5) the name assumed by such corporation; (6) a statement that such corporation elects to become a cooperative, non-profit, membership corporation subject to this act; (7) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and (8) any provisions not inconsistent with this act deemed necessary or advisable for the conduct of its business and affairs;

(b) The proposition for the conversion of such corporation into a cooperative under this act and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative under this act and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting, or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting;

(c) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed and acknowledged on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders, of the proposition for the conversion of such corporation into a cooperative under this act and such articles of conversion were duly complied with. Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this act; and

(d) The term "articles of incorporation" as used in this act shall be deemed to include the articles of conversion of a converted corporation.

History: En. Sec. 16, Ch. 172, L. 1939; amd. Sec. 7, Ch. 80, L. 1957.

Amendment

The 1957 amendment in the first paragraph inserted the words "or telephone

service"; deleted the words "be converted into a cooperative and" which appeared between the words "may" and "become" and inserted the words "under this act" each time they appear in subds. (a), (b) and (c).

14-523. Repealed.

Repeal

This section (Sec. 23, Ch. 172, L. 1939), relating to the recordation of mortgages,

was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

14-527. Fees. The secretary of state shall charge and collect for:

(a) Filing articles of incorporation and issuing a certificate of incorporation, forty dollars (\$40.00);

(b) Filing articles of amendment and issuing a certificate of amendment, ten dollars (\$10.00);

(c) Filing articles of consolidation or merger and issuing a certificate of consolidation or merger, ten dollars (\$10.00);

(d) Filing articles of conversion and issuing a certificate of conversion, ten dollars (\$10.00);

(e) Filing certificate of election to dissolve and issuing certificate of election to dissolve, ten dollars (\$10.00);

(f) Filing articles of dissolution and issuing certificate of dissolution, ten dollars (\$10.00); and

(g) Filing certificate of change of principal office and issuing certificate of change of office, ten dollars (\$10.00).

History: En. Sec. 27, Ch. 172, L. 1939; amd. Sec. 5, Ch. 117, L. 1961.

Amendment

The 1961 amendment increased the fee in subd. (a) from \$5.00 to \$40.00; increased each of the fees in subds. (b) to (g) from \$5.00 to \$10.00; and inserted "and issuing a certificate of incorporation"

in subd. (a), "and issuing a certificate of amendment" in subd. (b), "and issuing a certificate of consolidation or merger" in subd. (c), "and issuing a certificate of conversion" in subd. (d), "and issuing certificate of election to dissolve" in subd. (e), "and issuing certificate of dissolution" in subd. (f), and "and issuing certificate of change of office" in subd. (g).

14-528. Exemption from excise taxes—license fee. Cooperatives and foreign corporations, transacting business in this state pursuant to the provisions of this act, shall pay annually, on or before the first day of July, to the secretary of state, a fee of ten dollars (\$10.00) for each one hundred (100) persons or fractions thereof to whom electricity or telephone service is supplied within the state, but shall be exempt from all other excise and income taxes of whatsoever kind or nature.

History: En. Sec. 28, Ch. 172, L. 1939; amd. Sec. 8, Ch. 80, L. 1957.

Amendment

The 1957 amendment inserted the words "or telephone service."

14-530. Definitions. In this act, unless the context otherwise requires:

(a) "Rural area" as applied to all corporations organized under the provisions of paragraph (a) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act, means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred (3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto; "rural area" as applied to all corporations organized under the provisions of paragraph (b) of section 14-502, Revised Codes of Montana, 1947, as amended by section 2 of this act, means any area not included within the boundaries of any incorporated or unincorporated city or town having a population in excess of fifteen hundred (1500) persons.

(b) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof or any body politic; and

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein, and shall include a husband and wife admitted to joint membership.

History: En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949; amd. Sec. 9, Ch. 80, L. 1957.

Amendment

The 1957 amendment made substantial

changes in subd. (a). Prior to this amendment it read "(a) 'Rural area' means any area not included within the boundaries of any incorporated or unincorporated city, town, village or borough having a population in excess of thirty-five hundred

(3500) persons at the time of the passage and approval of chapter 172, Session Laws of Montana, 1939, or subsequent thereto."

Repealing Clause

Section 10 of Ch. 80, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 80, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 2, 1957.

Annexed Area

The right of a co-operative electric company to service nonmembers not in excess of 10 per cent of the total number of members is subject to the rural areas limitation and where a rural area served by a co-op is annexed by a city of more than 3,500 population the co-op may continue to serve existing customers in the annexed area but is not authorized to extend its services to other customers there. *Montana Power Co. v. Vigilante Electric Co-operative, Inc.*, 143 M 119, 387 P 2d 718.

TITLE 15—CORPORATIONS

- Chapter 1. The creation of private corporations, 15-103, 15-104, 15-108.
2. Change in organization—amendment of articles—extension of life of certain corporations, 15-201, 15-204.
 3. By-laws, 15-302.
 4. Directors, 15-401.
 6. Corporate stock and rights of stockholders—Uniform Act for Simplification of Fiduciary Security Transfers, 15-606, 15-652 to 15-662.
 7. Assessments, 15-702.
 10. Corporate records, 15-1001.
 11. Dissolution of corporations by quo warranto—by decree of court—by act of directors and by other methods, 15-1101, 15-1119 to 15-1131.
 18. Merger of corporations engaged in petroleum products business, 15-1801.
 19. Consolidation or merger of corporations, 15-1901.
 20. Securities Act of Montana, 15-2001 to 15-2025.
 21. Professional service corporations, 15-2101 to 15-2116.

CHAPTER 1—THE CREATION OF PRIVATE CORPORATIONS

- Section 15-103. Private corporations—how formed.
- 15-104. Purposes for which private corporations may be formed.
- 15-108. Articles of incorporation—what to contain.

15-103. (5902) Private corporations—how formed. Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this chapter. In addition, they may be formed in the manner prescribed in “The Professional Service Corporation Act.”

History: En. Sec. 392, Civ. C. 1895; re-en. Sec. 3807, Rev. C. 1907; re-en. Sec. 5902, R. C. M. 1921; amd. Sec. 1, Ch. 161, L. 1963. Cal. Civ. C. Sec. 285.

Amendment

The 1963 amendment added the second sentence.

15-104. (5903) Purposes for which private corporations may be formed. The purposes for which the private corporations mentioned in the last section may be formed are:

1 to 32. * * * [Same as parent volume.]

33. The rendering of professional services as defined in the Professional Service Corporation Act.

No corporation must be formed for any other purpose than those mentioned in this section.

History: En. Sec. 393, Civ. C. 1895; re-en. Sec. 3808, Rev. C. 1907; amd. Sec. 1, Ch. 106, L. 1909; amd. Sec. 1, Ch. 95, L. 1921; re-en. Sec. 5903, R. C. M. 1921; amd.

Sec. 2, Ch. 161, L. 1963. Cal. Civ. C. Sec. 286.

Amendment

The 1963 amendment added clause 33.

15-108. (5905) Articles of incorporation—what to contain. Articles of incorporation must be prepared, setting forth:

1. The name of the corporation;
2. The purpose for which it is formed;
3. The name of the county, and the city, town or place within the county, in which its principal office or principal place of business is to be located in this state;

4. The term for which it is to exist, not exceeding forty (40) years;

5. The number of its directors or trustees, which shall not be less than three (3) and the names and residences of those who are appointed for the first three (3) months, and until their successors are elected and qualified. Subject to such limitation, the number of directors shall be fixed by the by-laws, and amendments thereto duly adopted by the stockholders or directors. The number of directors may be increased or decreased from time to time by amendment to the by-laws, duly adopted by the stockholders or directors, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a by-law fixing the number of directors, the number shall be the number stated in the articles of incorporation.

6 to 8. * * * [Same as parent volume.]

History: En. Sec. 403, Civ. C. 1895; amd. Sec. 1, Ch. 102, L. 1905; re-en. Sec. 3818, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1915; re-en. Sec. 5905, R. C. M. 1921; amd. Sec. 1, Ch. 35, L. 1931; amd. Sec. 1, Ch. 183, L. 1963. Cal. Civ. C. Sec. 290.

Amendment

The 1963 amendment deleted the words "nor more than thirteen (13)" which followed "not be less than three (3)" near the beginning of paragraph 5; and added the second, third, and fourth sentences of paragraph 5.

CHAPTER 2—CHANGE IN ORGANIZATION—AMENDMENT OF ARTICLES—EXTENSION OF LIFE OF CERTAIN CORPORATIONS

Section 15-201. Amendment of articles of incorporation—purposes.

15-204. Contents of notice.

15-201. (5918) Amendment of articles of incorporation — purposes.

Any corporation heretofore or hereafter organized under any of the laws of the state of Montana, may, in the manner herein provided, amend its articles of incorporation by changing the name, place of business or number of directors, or to provide that the number of directors may be fixed by the by-laws, by changing the number, par value, character, class or preference of its shares of capital stock, by increasing or decreasing the capital stock, by changing or extending its powers or business to embrace any power or purpose for which corporations may be organized under the laws of Montana, or by an amendment in respect to any other matter which might lawfully have been originally provided in such articles of incorporation, or is now or may be, by law, provided in original articles of incorporation or in amendments thereto.

History: En. Sec. 1, Ch. 56, L. 1921; re-en. Sec. 5918, R. C. M. 1921; amd. Sec. 1, Ch. 28, L. 1925; amd. Sec. 1, Ch. 38, L. 1931; amd. Sec. 1, Ch. 32, L. 1947; amd. Sec. 2, Ch. 183, L. 1963. Cal. Civ. C. Sec. 362. (Sections 5918-5929, R. C. M. 1921 superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts

amendatory thereof; also Ch. 100, L. 1915.)

Amendment

The 1963 amendment inserted the words "or to provide that the number of directors may be fixed by the by-laws."

15-204. (5921) Contents of notice. Said notice shall state the time and place of said meeting, shall distinctly specify the purpose thereof, and shall specifically state the proposed change of name, if any; the place from which and to which it is proposed to change its principal place of business, if any; the proposed increase or decrease in the number of its

trustees or directors, if any, provided, however, that the number thereof shall at no time be less than three; that it is proposed that the number of directors may be fixed by the by-laws; the proposed change in the number, par value, character, class or preference of the shares of capital stock, if any; the extent of the proposed increase or decrease of the amount of capital stock, if any; the proposed change or extension of the business of such corporation, if any; the length of the proposed extension of the term of existence of such corporation, if any; and a specific statement of the nature of any other proposed amendment.

History: En. Sec. 4, Ch. 56, L. 1921; re-en. Sec. 5921, R. C. M. 1921; amd. Sec. 3, Ch. 183, L. 1963. (Secs. 5918-5929, R. C. M. 1921, superseded secs. 3812-3814, 3826-3828, 3849, 3894 and 3907, Rev. C. 1907, and all acts amendatory thereof; also Ch. 100, L. 1915.)

Amendment

The 1963 amendment deleted the words "nor more than thirteen" which followed "less than three" in the clause pertaining to changes in the number of trustees or directors; and inserted the words "that it is proposed that the number of directors may be fixed by the by-laws."

CHAPTER 3—BY-LAWS

Section 15-302. By-laws—may provide for what.

15-302. (5931) By-laws—may provide for what. A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings;
2. The number of stockholders or members constituting a quorum;
3. The mode of voting by proxy;
4. The number of directors and the mode and manner of increasing or decreasing the number of directors; the time of the annual election of directors, and the mode and manner of giving notice thereof;
5. The compensation and duties of officers;
6. The manner of election and the tenure of office of all officers other than the directors; and,
7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars (\$100) for any one offense.

History: En. Sec. 432, Civ. C. 1895; re-en. Sec. 3831, Rev. C. 1907; re-en. Sec. 5931, R. C. M. 1921; amd. Sec. 4, Ch. 183, L. 1963. Cal. Civ. C. Sec. 303.

Amendment

The 1963 amendment inserted "The number of directors and the mode and manner of increasing or decreasing the number of directors" at the beginning of clause 4.

CHAPTER 4—DIRECTORS

Section 15-401. Corporate powers and business exercised by board of directors—number and membership of board—quorum.

15-401. (5933) Corporate powers and business exercised by board of directors—number and membership of board—quorum. The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than three (3) directors, to be elected from among the holders of stock, or where there is no capital stock, then from the members of such

corporations. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation, except those named in the articles of incorporation for the first three (3) months, who shall be directors until their successors are elected and qualified. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board. When a vacancy or vacancies in the office of director is created by virtue of an increase in the number of directors by a by-law adopted by the stockholders or the board of directors such vacancy or vacancies shall be filled by an appointee or appointees of the board of directors and such appointee or appointees shall hold the office of director until the next regular annual election of directors when the office held by such appointee or appointees shall be filled by an election of the stockholders or members as in the case of the election of other directors.

History: En. Sec. 434, Civ. C. 1895; re-en. Sec. 3833, Rev. C. 1907; re-en. Sec. 5933, R. C. M. 1921; amd. Sec. 5, Ch. 183, L. 1963. Cal. Civ. C. Sec. 305.

Amendment

The 1963 amendment deleted the words "nor more than thirteen" which preceded "directors" in the first sentence; and added the last sentence.

Repealing Clause

Section 6 of Ch. 183, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 183, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

Discretion of Directors

Where the board of directors in good faith deemed it not in the best interests of the corporation not to prosecute an action on behalf of the corporation against another, a dissenting director and stockholder could not force the board to prosecute the action by means of an action against the board and the third party. *Brooks v. Brooks Pontiac, Inc.*, 143 M 256, 389 P 2d 185.

15-405. (5937) Election of directors.

Cumulative Voting

A corporation may not deprive a stockholder of the right of cumulative voting by any act on its part. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Stockholders may contract among themselves with respect to voting their stock

and a contract to refrain from cumulative voting is valid. However, an invalid by-law, attempting to dispense with cumulative voting, was not enforceable as a contract, even among those stockholders assenting to it. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

CHAPTER 6—CORPORATE STOCK AND RIGHTS OF STOCKHOLDERS— UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

- Section 15-606. Five per cent of stock may demand statement.
 15-652. Definitions.
 15-653. Registration in the name of a fiduciary.
 15-654. Assignment by a fiduciary.
 15-655. Evidence of appointment or incumbency.
 15-656. Adverse claims.
 15-657. Non-liability of corporation and transfer agent.
 15-658. Non-liability of third persons.
 15-659. Territorial application.
 15-660. Tax obligations.
 15-661. Uniformity of interpretation.
 15-662. Short title.

15-603. (5954) Repealed.**Repeal**

This section (Sec. 1, Ch. 143, L. 1907), relating to the passage of title on the

transfer of shares, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

15-605. (5956) Repealed.**Repeal**

This section (Sec. 474, Civ. C. 1895), relating to the transfer of shares of non-

resident stockholders, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

15-606. (5957) Five per cent of stock may demand statement. Whenever any person or persons owning five per cent of the capital stock of any corporation shall present a written request to the treasurer thereof that they desire a statement of the affairs of such corporation, it shall be the duty of such treasurer to make a statement under oath, of its assets and liabilities in a form ordinarily used and accepted in commercial transactions, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation; and shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder of said corporation demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any provisions of this chapter, he shall forfeit and pay to the person presenting said request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

History: En. Sec. 27, p. 31, L. 1867; re-en. Sec. 27, p. 412, Cod. Stat. 1871; re-en. Sec. 270, 5th Div. Rev. Stat. 1879; re-en. Sec. 472, 5th Div. Comp. Stat. 1887; re-en. Sec. 475, Civ. C. 1895; re-en. Sec. 3858, Rev. C. 1907; re-en. Sec. 5957, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1961.

Amendment

The 1961 amendment substituted in the first sentence a phrase reading "under oath, of its assets and liabilities in a form ordinarily used and accepted in commercial transactions" for one which read "of the affairs of the corporation, under oath, embracing a particular account of all its assets and liabilities in minute detail."

15-628 to 15-651. Repealed.**Repeal**

These sections (Secs. 1 to 23, 26, Ch. 115, L. 1943), the "Uniform Stock Trans-

fer Act," were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

15-652. Definitions. In this act, unless the context otherwise requires:

(a) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust, or other instrument of transfer.

(b) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir, or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on

his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(c) "Corporation" means a private or public corporation, association or trust issuing a security.

(d) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee.

(e) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(f) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(g) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(h) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

History: En. Sec. 1, Ch. 101, L. 1963.

In New Mexico this Uniform Act was repealed by enactment of the Uniform Commercial Code.

NOTE.—Uniform State Law. Sections 15-652 through 15-662 constitute the "Uniform Act for Simplification of Fiduciary Security Transfers" as promulgated by the National Conference of Commissioners on Uniform State Laws in 1958 and adopted in the states of Alabama, Arizona, California, Colorado, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Title of Act

An act to adopt the Uniform Act for Simplification of Fiduciary Security Transfers as promulgated by the national conference of commissioners on uniform state laws in 1958; establishing a mode for transfer of securities held by fiduciaries; providing evidence of appointment or incumbency of a fiduciary; providing for the filing of adverse claims; and removing a duty by corporations and transfer agents to inquire into the rightfulness of security transfers by fiduciaries.

15-653. Registration in the name of a fiduciary. A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

History: En. Sec. 2, Ch. 101, L. 1963.

15-654. Assignment by a fiduciary. Except as otherwise provided in this act, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary

(a) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(b) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

History: En. Sec. 3, Ch. 101, L. 1963.

15-655. Evidence of appointment or incumbency. A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty (60) days before the transfer; or

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

History: En. Sec. 4, Ch. 101, L. 1963.

15-656. Adverse claims. (a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this act relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty (30) days after the mailing and shall then make the transfer unless restrained by a court order.

History: En. Sec. 5, Ch. 101, L. 1963.

15-657. Non-liability of corporation and transfer agent. A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this act.

History: En. Sec. 6, Ch. 101, L. 1963.

15-658. Non-liability of third persons. (a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this act incurs no liability.

(c) This section does not impose any liability upon the corporation or its transfer agent.

History: En. Sec. 7, Ch. 101, L. 1963.

15-659. Territorial application. (a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This act applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

History: En. Sec. 8, Ch. 101, L. 1963.

15-660. Tax obligations. This act does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

History: En. Sec. 9, Ch. 101, L. 1963.

15-661. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 10, Ch. 101, L. 1963.

15-662. Short title. This act may be cited as the "Uniform Act for the Simplification of Fiduciary Security Transfers."

History: En. Sec. 11, Ch. 101, L. 1963.

Effective Date

Repealing Clause

Section 12 of Ch. 101, Laws 1963 repealed all acts or parts of acts in conflict therewith.

Section 13 of Ch. 101, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

CHAPTER 7—ASSESSMENTS

Section 15-702. Limitation upon amount of assessment.

15-702. (5974) Limitation upon amount of assessment. No one assessment must exceed ten per cent of the amount of the capital stock named in the articles of incorporation, except that if the whole capital stock of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or, if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

History: En. in substance as Sec. 2, p. 84, L. 1883; re-en. Sec. 497, 5th Div. Comp. Stat. 1887; re-en. in present form as Sec. 491, Civ. C. 1895; re-en. Sec. 3868, Rev. C. 1907; re-en. Sec. 5974, R. C. M. 1921; amd. Sec. 1, Ch. 30, L. 1965. Cal. Civ. C. Sec. 332.

ditch companies may levy for certain purposes from five to ten per cent of the amount of capital stock; amending section 15-702, R. C. M. 1947."

Amendment

The 1965 amendment increased the maximum amount of a single assessment from 5% to 10% of the capital stock.

Compiler's Note

The title of the 1965 amendatory act read: "An act increasing the amount

CHAPTER 8—POWERS AND DUTIES OF CORPORATIONS

15-801. (5994) Powers of corporations.

Payment for Stock

Payments of money made to a television cable corporation, upon the issuance of stock to Class B stockholders, which were not made for stock but rather for services rendered and to be rendered by the corporation, constituted ordinary taxable income under section 61 (a) of the Internal Revenue Code of

1954. The purported stock purchases were in fact payments required of subscribers in consideration of such services. *Community T. V. Assn. of Havre v. United States*, 203 F Supp 270, 276.

References

Carnahan v. United States, 188 F Supp 461, 466.

15-808. (6000) Corporations to organize within one year, etc.

Action by State

This section limits its effect to an action by the state at the suit of the attorney general. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 941.

Banks

The provisions of the first sentence of this section are in direct conflict with the provisions of section 5-207, under

which the superintendent of banks is granted power to revoke a bank's certificate, so do not apply to banks. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 197 F Supp 417, 424, affirmed in 306 F 2d 937.

This section is not applicable to banks. *First Nat. Bank in Billings v. First Bank Stock Corp.*, 306 F 2d 937, 941.

15-811. (6003) Annual statement of corporations.

Collateral References

19 C.J.S. Corporations §§ 895, 896.

CHAPTER 10—CORPORATE RECORDS

Section 15-1001. Corporate records—to consist of what, and how kept.

15-1001. (6008) Corporate records—to consist of what, and how kept. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and, in the record of directors' meetings, who absent. If requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full, and such records must be open to the inspection of any director, member, stockholder, or creditor of the corporation; provided, that in lieu of embracing in the record of stockholders' or members' meetings who were present, a list showing the name of those present at any such meeting, certified by the chairman and secretary thereof, may be filed and kept in the office of the secretary of the corporation. Provided, however, any corporate act to be performed by the directors of a corporation may be performed by resolution with the signed consent of all of the directors of said corporation then living, without a formal meeting of the directors being held therefor. Such resolution shall be placed in the minute book of the corporation. Provided, further, that any corporate act to be performed by the stockholders of a corporation may be performed by a resolution with the signed consent of all of the stockholders of said corporation (or their proxies or personal representatives), without a formal meeting of the stockholders being held therefor. Such resolution shall be placed in the minute book of the corporation.

History: En. Sec. 540, Civ. C. 1895; re-en. Sec. 3902, Rev. C. 1907; re-en. Sec. 6008, R. C. M. 1921; amd. Sec. 1, Ch. 47, L. 1931; amd. Sec. 1, Ch. 155, L. 1963. Cal. Civ. C. Sec. 377.

provisos and the sentences auxiliary thereto.

Effective Date

Section 2 of Ch. 155, Laws 1963 provided the act should be in effect upon its passage and approval. Approved March 5, 1963.

Amendment

The 1963 amendment added the last two

CHAPTER 11—DISSOLUTION OF CORPORATIONS BY QUO WARRANTO —BY DECREE OF COURT—BY ACT OF DIRECTORS AND BY OTHER METHODS

- Section 15-1101. Dissolution of corporations.
 15-1119. Complaint by shareholders seeking dissolution.
 15-1120. Reasons for involuntary dissolution by court.
 15-1121. Intervention by shareholder or creditor.
 15-1122. Summons—procedure and process.
 15-1123. Appointment of receiver.
 15-1124. Offer to purchase shares of complaining shareholders.
 15-1125. Appraisal of plaintiffs' shares.
 15-1126. Award for plaintiffs' shares.
 15-1127. Election to purchase plaintiffs' shares—refusal—order for delivery.

- 15-1128. Court orders for dissolution.
- 15-1129. Liberal construction.
- 15-1130. Application to existing corporations.
- 15-1131. Tax clearance certificate.

15-1101. (6010) Dissolution of corporations. A corporation is dissolved:

1. By expiration of the time limited by its charter provided its corporate existence is not extended in the manner provided by law; or
2. By a judgment of dissolution in the manner provided by sections 93-6401 to 93-6426, governing quo warranto proceedings and in the manner provided by sections 15-1108 to 15-1114, governing voluntary dissolution of corporations by decree of court; or
3. By an act of the legislative assembly; or
4. A corporation which has ceased to transact business and which has no assets may likewise be dissolved by the directors in the manner provided by sections 15-1115 to 15-1118.
5. In the manner provided by sections 15-1119 to 15-1130.

History: En. Sec. 560, Civ. C. 1895; amd. Sec. 1, Ch. 241, L. 1963. Cal. Civ. C. re-en. Sec. 3905, Rev. C. 1907; re-en. Sec. Sec. 399.

6010, R. C. M. 1921; amd. Sec. 1, Ch. 8, L. 1931; amd. Sec. 1, Ch. 33, L. 1947;

Amendment

The 1963 amendment added clause 5.

15-1102. (6011) Winding up the affairs of and disposing of property, etc.

Suits by Stockholders

Individuals cannot maintain an action for a corporation on the theory that they are the possible successors to the corpo-

ration's title upon the expiration of the corporate life. *Malcom v. Stondall Land & Investment Co.*, 129 M 142, 284 P 2d 258, 261.

15-1108. (9922) Corporations—how dissolved.

Cross-Reference

Application of Montana Rules of Civil

Procedure to dissolution proceedings, see M. R. Civ. P., Rule 81(a), Table A.

15-1113. (9927) Hearing of applications—directors as trustees, etc.

Cross-Reference

Tax clearance certificate required for dissolution, sec. 15-1131.

15-1116. (9930) Directors shall file statement—where, etc.

Cross-Reference

Tax clearance certificate required for dissolution, sec. 15-1131.

15-1119. Complaint by shareholders seeking dissolution. A complaint for the involuntary winding up or dissolution of a corporation (other than banks, public utilities and building and loan associations) may be filed in the district court of any county wherever such corporation maintains an office or does business by the following persons:

1. A shareholder or shareholders who have held not less than twenty-five per cent (25%) of the number of outstanding shares for a period of not less than six (6) months.

2. Any shareholder if the reason for dissolution is that the corporate term has expired, without extension thereof.

This act shall not apply to any corporation whose capital stock is offered to the public or to any corporation whose stock is listed on any established stock exchange.

History: En. 15-1119 by Sec. 2, Ch. 241, L. 1963.

Title of Act

An act to amend Chapter 11 of Title 15 of the Revised Codes of Montana, 1947, by adding sections 15-1119 to 15-1130 both inclusive, Revised Codes of Montana, 1947; relating to the involuntary winding up or dissolution of private corporations created under the laws of Montana upon complaint by a shareholder; providing judicial procedure therefore; providing the grounds and reasons therefore; authorizing appointment of receiver in actions therefore; providing that owners of fifty per cent (50%) or more of the stock of corporations may avoid dissolution by purchase

of shares of complaining stockholder at fair cash value thereof; providing for judicial determination of the fair cash value of stock of corporation; providing act shall be liberally construed; providing manner for winding up or dissolving corporation; making act applicable to existing corporations as well as those created hereafter; repealing all acts or parts of acts in conflict herewith; amending section 15-1101, Revised Codes of Montana, 1947; providing a severability clause; and providing an effective date.

Cross-Reference

Tax clearance certificate required for dissolution, sec. 15-1131.

15-1120. Reasons for involuntary dissolution by court. Upon the filing of complaint the court may order involuntary winding up or dissolution of such a corporation when it finds that any one or more of the following reasons exist:

1. The corporation has abandoned its business for more than one (1) year;
2. The corporate powers have been materially impaired by reason of a deadlock between shareholders or between directors;
3. The directors or those in control of the corporation have been guilty of fraud or gross mismanagement;
4. The directors of [or] those in control of the corporation have so oppressed the minority stock interests as to make it unfair to refuse dissolution.
5. The period for which the corporation was formed has terminated by lapse of time without extension thereof.

History: En. 15-1120 by Sec. 3, Ch. 241, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "or" in subd. 4.

15-1121. Intervention by shareholder or creditor. At any time prior to the trial of the action any shareholder or creditor may intervene therein either as a plaintiff or as a defendant.

History: En. 15-1121 by Sec. 4, Ch. 241, L. 1963.

15-1122. Summons—procedure and process. Summons shall be issued and served as in other civil actions and the rules of procedure and process governing civil actions generally shall apply to complaints filed under the provisions of this act.

History: En. 15-1122 by Sec. 5, Ch. 241, L. 1963.

15-1123. Appointment of receiver. In such actions, the court may appoint a receiver. The appointment of such receiver shall be made in the manner provided by sections 93-4402 to 93-4407, Revised Codes of Montana, 1947.

History: En. 15-1123 by Sec. 6, Ch. 241, L. 1963.

15-1124. Offer to purchase shares of complaining shareholders. In any such suit the holders of fifty per cent (50%) or more of the outstanding shares of the corporation may avoid the appointment of a receiver or the dissolution of the corporation by purchasing, ratably in the proportions of their stock ownership, the shares of stock owned by the complaining shareholders at their fair cash value. Such election shall be made by filing written notice thereof at any time before trial and, if required by the court, by posting a bond fixed by the court in an amount sufficient to protect the rights of said complaining shareholders. Upon filing of such notice the court shall stay the proceeding and shall proceed to ascertain and fix the value of the shares owned by the plaintiffs.

History: En. 15-1124 by Sec. 7, Ch. 241, L. 1963.

15-1125. Appraisal of plaintiffs' shares. The court shall appoint three disinterested commissioners to appraise the fair cash value of the shares owned by plaintiffs and order the matter referred to the commissioners so appointed for the purpose of ascertaining such value. The commissioners shall meet at a time and place fixed by the court and shall hear the evidence of the parties. In determining fair cash value of such stock the commissioners shall not consider any value or depreciation in value attributable to control or lack of control of the corporation.

History: En. 15-1125 by Sec. 8, Ch. 241, L. 1963.

15-1126. Award for plaintiffs' shares. The award of the commissioners shall be in writing and shall separately state:

- (1) The net worth of the assets of the corporation.
- (2) The fair cash value of plaintiff's stock.

History: En. 15-1126 by Sec. 9, Ch. 241, L. 1963.

15-1127. Election to purchase plaintiffs' shares—refusal—order for delivery. Within 60 days after receiving notice of the award, the stockholders electing to purchase plaintiff's stock shall file such notice of election. Payment shall be made in cash or upon such contractual terms as may be ordered or approved by the court. If the purchasers electing to purchase plaintiff's stock shall refuse to enter into a contract containing terms ordered by the court, which contract has been approved by the court, or shall fail to deposit the amount of the award with the clerk of court within such period, a decree shall forthwith be entered winding up and dissolving such corporation. If the plaintiff shall refuse to enter

into such contract, a decree shall be entered dismissing the action. The decree may be appealed from as a final judgment.

If such deposit is made plaintiff's stock shall be delivered to the clerk of court properly endorsed for transfer, and the court may order the money and stock delivered to the parties entitled thereto.

History: En. 15-1127 by Sec. 10, Ch. 241, L. 1963.

15-1128. Court orders for dissolution. The court may make such orders for winding up and dissolution of the corporation as justice and equity require, including orders providing for the presentation of claims of creditors, and the barring from participation of creditors and claimants failing to make claims and present proof, as in cases of proceedings for voluntary winding up and dissolution.

History: En. 15-1128 by Sec. 11, Ch. 241, L. 1963.

Cross-Reference

Tax clearance certificate required for dissolution, sec. 15-1131.

15-1129. Liberal construction. This act shall be liberally construed in order to achieve substantial justice and safeguard the rights of shareholders and creditors of such corporations.

History: En. 15-1129 by Sec. 12, Ch. 241, L. 1963.

15-1130. Application to existing corporations. Under the power reserved to the legislature of Montana this act shall apply to all existing corporations as well as to those created hereafter.

History: En. 15-1130 by Sec. 13, Ch. 241, L. 1963.

Repealing Clause

Section 14 of Ch. 241, Laws 1963 repealed all acts or parts of acts in conflict therewith.

Separability Clause

Section 15 of Ch. 241, Laws 1963 read "If a part of this act shall be declared to be invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is declared to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 16 of Ch. 241, Laws 1963 provided the act should be in effect after its passage and approval. Approved March 9, 1963.

15-1131. Tax clearance certificate. No decree of dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree, or file any other document by which the term of existence of any taxpayer is terminated, nor shall the secretary of state file any certificate of surrender by a foreign corporation of its right to do intrastate business in the state unless the taxpayer obtains from the state board of equalization and files with said court, clerk of the district court, or secretary of state as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the state board of equalization is satisfied from the available evidence that all taxes imposed by Title 84 of the Revised Codes of Montana have been paid. The issuance of the certificate shall not relieve the taxpayer or any individual, bank or corporation from liability for any taxes, penalties, or interest due the state of Montana.

History: En. 15-1119 by Sec. 1, Ch. 59, L. 1963.

Compiler's Note

Section 2 of Ch. 59, Laws 1963 read "This act shall be codified as section 15-1119, R. C. M. 1947." However, Chapter 241, Laws 1963, also enacted a section specifically designated as section 15-1119, and Sec. 14 of Ch. 241 repealed all inconsistent acts. For this reason, and in the interest of a logical arrangement, the compiler has redesignated this section as 15-1131.

Title of Act

An act requiring a corporation to obtain a tax clearance certificate from the state board of equalization before dissolution is allowed and providing that this act shall be codified as section 15-1119, R. C. M. 1947.

Effective Date

Section 3 of Ch. 59, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 21, 1963.

CHAPTER 12—SCOPE OF LAW—LEGISLATURE MAY REPEAL

15-1201. (6012) Scope of corporation laws.

Banks

The requirement of section 15-808 that a corporation "commence the transaction of its business or the construction of its works within one year from the date of its incorporation" is not applicable to banks which are governed by section 5-

207. First Nat. Bank in Billings v. First Bank Stock Corp., 306 F 2d 937, 941.

References

First Nat. Bank in Billings v. First Bank Stock Corp., 197 F Supp 417, 424.

CHAPTER 17—FOREIGN CORPORATIONS

15-1701. (6651) Foreign corporations—requirements, etc.

Citizenship of Qualifying Corporation

A federal district court in Montana had jurisdiction of an action by a Montana resident against a joint venture composed of a New Jersey and an Arizona corporation, each qualified to do business in Montana under sections 15-1701 to 15-1713, since neither corporation became a citizen of Montana by qualifying to do business and consenting to be sued in Montana. Carson Constr. Co. v. Fuller-Webb Constr., 198 F Supp 464, 469.

A corporation engaged in financing mobile homes was not doing business in the state of Montana where there was no evidence that it had any office, place of business or resident agents or employees in Montana; it did not deal directly with any customers or purchasers, but solely with dealers; and this business was conducted by mail pursuant to an agreement reciting that it was made and entered into in Tulsa, Oklahoma. Minnehoma Financial Co. v. Van Oosten, 198 F Supp 200, 204.

Interstate Commerce

Activities of a foreign corporation in Montana which are in interstate com-

merce are not subject to the provisions of this section. Union Interchange, Inc. v. Parker, 138 M 348, 357 P 2d 339, 345; Minnehoma Financial Co. v. Van Oosten, 198 F Supp 200, 207.

The activities of a foreign corporation engaged in constructing motel and a foreign corporation, furnishing material for the project, were not incidental to interstate commerce and mechanics' liens were unenforceable under section 15-1703 where failure of principal contractor and materialman to qualify to do business in Montana in violation of this section made principal contract unenforceable under section 15-1703. Greene Plumbing & Heating Co. v. Morris, — M —, 395 P 2d 252, 258, 259.

What Constitutes Doing Business in State

The determination whether plaintiff was doing business in Montana within the purview of this section or was carrying on the business of a real estate broker within the purview of Chapter 19 of Title 66, was a question of law under section 93-2501-2. Union Interchange, Inc. v. Parker, 138 M 348, 357 P 2d 339, 343, explained in 198 F Supp 200, 207.

15-1703. (6653) Contracts void if made before compliance, etc.**Enforcement of Contract**

The activities of a foreign corporation engaged in constructing motel, and a foreign corporation furnishing material for the project, were not incidental to interstate commerce and mechanics' liens were unenforceable where failure of principal contractor and materialman to qualify to do business in Montana in violation of section 15-1701 made principal contract unenforceable. *Greene Plumbing & Heat-*

ing Co. v. Morris, — M —, 395 P 2d 252, 258, 259.

A corporation engaged in financing mobile homes, who was not doing business in the state of Montana, could enforce guaranties of conditional sales contracts, assigned to it by a mobile home dealer in Montana, in Montana. *Minnehoma Financial Co. v. Van Oosten*, 198 F Supp 200, 204.

15-1712. (6661.1) Withdrawal of foreign corporation from state.**Cross-Reference**

Tax clearance certificate required for withdrawal from state, sec. 15-1131.

CHAPTER 18—MERGER OF CORPORATIONS ENGAGED IN PETROLEUM PRODUCTS BUSINESS

Section 15-1801. Oil, gas and other petroleum products corporations may merge or consolidate—agreement for merger or consolidation.

15-1801. Oil, gas and other petroleum products corporations may merge or consolidate—agreement for merger or consolidation. Any one or more corporations engaged in the production, marketing, or refining of oil, gas or other petroleum products or otherwise engaged in the oil, gas or petroleum products business organized under the provisions of the law of this state, or existing thereunder, may consolidate or merge with one (1) or more other like corporations organized under the laws of this or of any other state or states or territory of the United States of America if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger.

The constituent corporations may merge into a single corporation which may be any one of said constituent corporations, or they may consolidate to form a new corporation which may be a corporation of the state of incorporation of any one of said constituent corporations or shall be specified in the agreement hereinafter required. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the manner of converting the shares of each of said constituent corporations into shares of the corporation resulting from or surviving such consolidation or merger and such details and provisions as shall be deemed necessary or proper. In case of consolidation to form a new corporation there shall also be set forth in said agreement such other facts as shall then be required to be set forth in certificates of incorporation by the laws that shall govern said resulting corporation and that can be stated in the case of a consolidation.

Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws under which it is formed and in the case of a Montana corporation in the manner provided in section 15-1802. The agreement so authorized,

adopted, approved, signed and acknowledged shall be filed in the office of the secretary of state and a copy of such agreement certified by the secretary of state under the great seal of the state of Montana, shall be filed but need not be recorded in the office of the county clerk of the county in this state wherein such resulting or surviving corporation maintains its principal place of business, if any, and also, in each other county in this state in which such corporation may own real estate, provided, however, that a failure to file such certified copy in the office of any county clerk of any county in this state shall not affect the validity of said merger or consolidation. Said agreement so filed in the office of the secretary of state shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said constituent corporations for all purposes of the laws of this state and said consolidation or merger shall take effect as of the date of the filing of said agreement with the secretary of state who shall, at the time of such filing, receive a fee of fifteen dollars (\$15.00) therefor. A copy of such agreement certified to be such by the secretary of state under the great seal of the state of Montana, shall be evidence of such merger or consolidation and of the contents of said agreement.

History: En. Sec. 1, Ch. 295, L. 1947;
amd. Sec. 6, Ch. 117, L. 1961.

Amendment

The 1961 amendment increased the filing fee specified in the last paragraph from \$5.00 to \$15.00.

CHAPTER 19—CONSOLIDATION OR MERGER OF CORPORATIONS

Section 15-1901. Certain corporations may merge or consolidate—agreement for merger or consolidation.

15-1901. Certain corporations may merge or consolidate—agreement for merger or consolidation. Except as otherwise specifically provided by the constitution or existing laws of the state of Montana any one or more corporations organized under the provisions of the law of this state or existing thereunder, may consolidate or merge with one or more other corporations organized under the laws of this or of any other state or states or territory of the United States of America if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger.

The constituent corporations may merge into a single corporation which may be any one of said constituent corporations, or they may consolidate to form a new corporation which may be a corporation of the state of incorporation of any one of said constituent corporations or (as) shall be specified in the agreement hereinafter required. All the constituent corporations shall enter into an agreement in writing which shall prescribe the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, the manner of converting the shares of each of said constituent corporations into shares of the corporation resulting from or surviving such consolidation or merger and such details and provisions as shall be deemed necessary or proper. In case of consolidation to form a new corporation there shall also be set forth in said agreement such other facts as shall then be required to be set forth in certificates of

incorporation by the laws that shall govern said resulting corporation and that can be stated in the case of a consolidation.

Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws under which it is formed and in the case of a Montana corporation in the manner provided in section 15-1902 hereof. The agreement so authorized, adopted, approved, signed and acknowledged shall be filed in the office of the secretary of state and a copy of such agreement certified by the secretary of state under the great seal of the state of Montana, shall be filed but need not be recorded in the office of the county clerk of the county in this state wherein such resulting or surviving corporation maintains its principal place of business, if any, and also, in each other county in this state in which such corporation may own real estate, provided, however, that a failure to file such certified copy in the office of any county clerk of any county in this state shall not effect [affect] the validity of said merger or consolidation. Said agreement so filed in the office of the secretary of state shall thenceforth be taken and deemed to be the agreement and act of consolidation or merger of said constituent corporations for all purposes of the laws of this state and said consolidation or merger shall take effect as of the date of the filing of said agreement with the secretary of state who shall, at the time of such filing, receive a fee of fifteen dollars (\$15.00) therefor. A copy of such agreement certified to be such by the secretary of state under the great seal of the state of Montana, shall be evidence of such merger or consolidation and of the contents of said agreement.

History: En. Sec. 1, Ch. 175, L. 1951;
amd. Sec. 7, Ch. 117, L. 1961.

Compiler's Note

The compiler has inserted the bracketed word "affect" in the last paragraph.

Amendment

The 1961 amendment adopted in parentheses a bracketed word "as" which the compiler had inserted in the second paragraph; and increased the filing fee in the last paragraph from \$5.00 to \$15.00.

CHAPTER 20—SECURITIES ACT OF MONTANA

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- 15-2022. Civil liabilities.
- 15-2023. Judicial review of orders.
- 15-2024. Administration of act.
- 15-2025. Proof of exemption.

15-2001. Office of investment commissioner. The office of the investment commissioner is hereby created, and the state auditor of Montana is hereby made and constituted ex officio investment commissioner.

History: En. Sec. 1, Ch. 251, L. 1961.

Title of Act

An act relating to securities and creating the office of investment commissioner; providing for the administration of the act and prescribing certain powers and duties in connection therewith; providing for the registration of securities; providing for the registration of broker-dealers, salesmen, and investment advisors; exempting certain securities and security transactions from the provisions of the act; providing for consent to service of process; providing for registration fees under the act; providing for investigations; providing for judicial review of orders; defining terms; providing penalties; providing effective date of act; repealing section 66-

2001; section 66-2002, as amended by section 1, chapter 178, laws of Montana, 1957; section 66-2003, as amended by section 2, chapter 178, laws of Montana, 1957; sections 66-2004 through 66-2006; section 66-2007, as amended by section 3, chapter 178, laws of Montana, 1957; sections 66-2008 through 66-2017; section 66-2018, as amended by section 4, chapter 178, laws of Montana, 1957; sections 66-2019 through 66-2022; section 66-2023, as amended by section 5, chapter 178, laws of Montana, 1957; section 66-2024, as amended by section 6, chapter 178, laws of Montana, 1957; sections 66-2025 and 66-2026, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith.

15-2002. Short title. This act may be cited as the "Securities Act of Montana."

History: En. Sec. 2, Ch. 251, L. 1961.

15-2003. Statutory policy. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 3, Ch. 251, L. 1961.

15-2004. Definitions. When used in this act, unless the context otherwise requires:

(1) "Commissioner" means investment commissioner of this state.

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but "salesman" does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by subsections 13(1), (2), (3), (9), (10), or (11) [15-2013(1), (2), (3), (9), (10), or (11)], of this title, (b) effecting transactions exempted by section 14 [15-2014], or (c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer or issuer is a "salesman" only if he otherwise comes within this definition.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (a) a salesman, issuer, bank, savings institution, trust company or insurance company, (b) a

person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee, or (c) a person who has no place of business in this state if during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in clause (b).

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(5) "Investment adviser" means any person who, for compensation, engages in the business of advising others either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include (a) a bank, savings institution, trust company or insurance company; (b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (c) a broker-dealer; (d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; (e) a person whose advice, analyses, or reports relate only to securities exempted by subsection 13(1) [15-2013(1)] of this title; (f) a person who has no place of business in this state if (i) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during any period of twelve (12) consecutive months he does not direct business communications into this state in any manner to more than five (5) resident clients other than those specified in clause (i); or (g) such other persons not within the intent of this paragraph as the commissioner may by rule or order designate.

(6) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(7) "Non-issuer" means not directly or indirectly for the benefit of the issuer.

(8) "Person," for the purpose of this act, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where

the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(9) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(10) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this act.

(11) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; pre-organization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money, either in a lump sum, or periodically for life, or some other specified period.

(12) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

History: En. Sec. 4, Ch. 251, L. 1961.

Compiler's Notes

The Securities Act of 1933, referred to in subd. (10) of this section, is compiled as sections 77a to 77aa, Title 15, U. S. Code.

The Securities Exchange Act of 1934 is

compiled as sections 78a to 78jj, Title 15, U. S. Code.

The Public Utility Holding Company Act of 1935 is compiled as sections 79 to 79z-6, Title 15, U. S. Code.

The Investment Company Act of 1940 is compiled as sections 80a-1 to 80a-52, Title 15, U. S. Code.

15-2005. Fraudulent and other prohibited practices. (1) It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly

(a) to employ any device, scheme, or artifice to defraud,

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in

the light of the circumstances under which they are made, not misleading, or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise,

(a) to employ any device, scheme, or artifice to defraud the other person, or

(b) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides:

(a) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Clause (a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in clause (b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

History: En. Sec. 5, Ch. 251, L. 1961.

15-2006. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under section 14 [15-2014], unless he is registered under this act. It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is so registered under this act, or (2) he is registered as a broker-dealer under this act, or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(2) A broker-dealer, salesman, acting as agents for an issuer or issuers or acting as agents for a broker-dealer in the sale of securities for

an issuer or issuers or investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner shall prescribe and payment of the fee prescribed in section 16 [15-2016]. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least one (1) year next prior to the date of application for registration. Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. Said bond to be in the sum of five thousand dollars (\$5,000.00), payable to the state of Montana, and conditioned upon the faithful compliance with the provisions of this act, and shall provide that upon failure to so comply the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information the commissioner requires.

(4) If no denial order is in effect and no proceeding is pending under subdivision (8) of this section, registration becomes effective at noon of the thirtieth (30th) day after an application is filed. The commissioner may specify an earlier effective date and he may by order defer the effective date for an additional sixty (60) days; the effective day after the filing of any amendment shall be noon of the thirtieth (30th) day thereafter unless otherwise accelerated by the commissioner.

(5) Registration of a broker-dealer, salesman or investment adviser shall be effective until the first (1st) day of March next following such registration and may be renewed as hereinafter provided. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(6) Registration of a broker-dealer, salesman or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under section 13(1) [15-2013(1)], as may be prescribed by the commissioner. All records so required shall be preserved for three (3) years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are

subject at any time or from time to time to such reasonable periodic, special or other examinations, within or without this state, by representatives of the commissioner, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has wilfully violated or wilfully failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past five (5) years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States Post Office fraud order; but (a) the commissioner may not institute a revocation or suspension proceeding under this clause more than one (1) year from the date of the order relied on, and (b) he may not enter any order under this clause on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser; or

(i) has not complied with a condition imposed by the commissioner under subdivision (8) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(9) Upon the entry of the order under subdivision (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within fifteen (15) days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within fifteen (15) days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify or vacate the order.

(10) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser or salesman, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

History: En. Sec. 6, Ch. 251, L. 1961.

Compiler's Notes

The Investment Company Act of 1940, referred to in subd. (1) of this section, is compiled as sections 80a-1 to 80a-52, Title 15, U. S. Code.

The Securities Exchange Act of 1934, referred to in subd. (8)(f) of this section, is compiled as sections 78a to 78jj, Title 15, U. S. Code.

15-2007. Registration of securities. It is unlawful for any person to offer to sell any security in this state, except securities exempt under section 13 [15-2013] or when sold in transactions exempt under section 14 [15-2014], unless such security is registered by notification, coordination, or qualification under this act.

History: En. Sec. 7, Ch. 251, L. 1961.

15-2008. Registration by notification. (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under this act:

(a) any security whose issuer and any predecessors have been in continuous operation for at least five (5) years if:

(1) there has been no default during the current fiscal year or within the three (3) preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(2) the issuer and any predecessors during the past three (3) fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend pro-

vision and which (i) equal at least five per cent (5%) of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within thirty (30) days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within ninety (90) days of the date of filing the registration statement), or (ii) if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three (3) full fiscal years, equal at least five per cent (5%) of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) any security (other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease) registered for non-issuer distribution of any security of the same class has ever been registered under this act or a predecessor act, or the security being registered was originally issued pursuant to an exemption under this act or a predecessor act.

(2) A registration statement by notification shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 16 [15-2016]:

(a) A statement demonstrating eligibility for registration by notification.

(b) With respect to the issuer: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business.

(c) A description of the securities being registered.

(d) Total amount of securities to be offered and amount of securities to be offered in this state.

(e) The price at which the securities are to be offered for sale to the public; any variation therefrom at which any portion of the offering is to be made to any persons, other than as underwriting and selling discounts or commissions; and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value).

(f) Names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(g) Description of any security options outstanding or to be created in connection with the offering.

(h) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the United States securities and exchange commission.

(i) A copy of any offering circular or prospectus to be used in connection with the offering.

(j) In the case of any registration under section 8(b) relating to non-issuer distribution which does not also satisfy the conditions of section 8(1)(a), a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement, and a summary of earnings for each of the two (2) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two (2) years.

(k) A consent to service of process meeting the requirements of section 15 [15-2015] of this act.

(3) If no stop order is in effect and no proceeding is pending under sections 12 [15-2012] and 12(3) [15-2012(3)], a registration statement by notification automatically becomes effective at three (3) o'clock Mountain Standard Time in the afternoon of the second (2nd) full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.

History: En. Sec. 8, Ch. 251, L. 1961.

15-2009. Registration by coordination. (1) Any security for which a registration statement has been filed under the Securities Act of 1933, or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments thereto, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to subsection (b) of section 3 of said Securities Act of 1933, in connection with the same offering may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 16 [15-2016]:

(a) Three (3) copies of the prospectus or offering circular and letter of notification filed under the Securities Act of 1933 or the general rules and regulations thereunder, together with all amendments thereto.

(b) The amount of securities to be offered in this state.

(c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed.

(d) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the securities and exchange commission.

(e) If the commissioner by rule or otherwise requires, a copy of the articles of incorporation and by-laws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) If the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933;

(g) An undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment which merely delays the effective date; and

(h) A consent to service of process meeting the requirements of section 15 [15-2015] of this act.

(2) A registration statement by coordination under section 9 [15-2009] automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under sections 12 [15-2012] and 12(3) [15-2012(3)],

(b) The registration statement has been on file with the commissioner for at least ten (10) days, and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(3) Upon failure to receive the required notification and post-effective amendment with respect to the price amendment referred to in subdivision (2) of this section, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subdivision (2) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and post-effective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subdivisions (2)(b) and (2)(c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under sections 12 [15-2012] and 12(3) [15-2012(3)]; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

History: En. Sec. 9, Ch. 251, L. 1961.

Compiler's Note

The Securities Act of 1933, referred to

in subd. (1) of this section, is compiled as sections 77a to 77aa, Title 15, U. S. Code.

15-2010. Registration by qualification. (1) Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 16 [15-2016].

(a) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business and a description of its physical properties and equipment.

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five (5) years; the amount of securities of the issuer held by him as of a specified date within ninety (90) days of the filing of the registration statement; the remuneration paid to all such persons in the aggregate during the past twelve (12) months, and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer (together with all predecessors, parents and subsidiaries).

(c) With respect to any person not named in subdivision (b), owning of record, or beneficially if known, ten per cent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision (b) other than his occupation.

(d) With respect to every promotor, not named in subdivision (b), if the issuer was organized within the past three (3) years: the information specified in subdivision (b), any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment.

(e) The capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities.

(f) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions and other promotional fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet

been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(g) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price.

(h) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivisions (b), (c), (d), (e), or (g) and by any person who holds or will hold ten per cent (10%) or more in the aggregate of any such options.

(i) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed.

(j) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission; a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities).

(k) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering.

(l) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and by-laws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.

(m) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered.

(n) A balance sheet of the issuer of a date within four (4) months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant.

(o) A consent to service of process meeting the requirements of section 15 [15-2015] of this act.

(2) In the case of a non-issuer distribution, information may not be required under section 10 [15-2010] unless it is known to the person filing the registration statement or to the persons on whose behalf the distri-

bution is to be made, or can be furnished by them without unreasonable effort or expense.

(3) A registration statement by qualification under section 10 [15-2010] becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in section 10 [15-2010] be sent or given to each person to whom an offer is made before or concurrently with (1) the first (1st) written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs; but the commissioner shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.

History: En. Sec. 10, Ch. 251, L. 1961. in subd. (3) of this section, is compiled as sections 77a to 77aa, Title 15, U. S. Code.

Compiler's Note

The Securities Act of 1933, referred to

15-2011. General provisions regarding registration of securities. (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under this act or a predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) The commissioner may require as a condition of registration by qualification or coordination (1) that any security issued within the past three (3) years or to be issued to a promotor for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration shall remain effective until revoked by the commissioner or until terminated upon request of the registrant with the consent of the commissioner; however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted

by the Securities and Exchange Commission relative to said securities, and shall continue suspended so long as such proceedings are pending and until the registration or filing with the Securities and Exchange Commission is effective. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non-issuer transaction. A registration statement which has become effective may not be withdrawn for one (1) year from its effective date if any securities of the same class are outstanding.

(4)(a) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940, or (b) are being offered and sold directly by or for the account of the issuer.

(b) During the period of public offering in the initial distribution of securities registered under the provisions of this act by notification or qualification, financial data or statements corresponding to those required under the provisions of sections 8(2) and 10 [15-2008(2) and 15-2010], and to the issuer's fiscal year, shall be filed with the commissioner annually, not less than ninety (90) days after the end of each such year. If such statements are not certified the commissioner may verify them by examining the issuer's books and records.

History: En. Sec. 11, Ch. 251, L. 1961;
amd. Sec. 1, Ch. 71, L. 1963.

Compiler's Note

The Investment Company Act of 1940, referred to in subd. (4)(a) of this section, is compiled as sections 80a-1 to 80a-52, Title 15, U. S. Code.

Amendment

The 1963 amendment added to the second sentence of subd. (3) the clause following the semicolon and providing for automatic suspension of registration.

Effective Date

Section 2 of Ch. 71, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 25, 1963.

15-2012. Denial, suspension and revocation of registration of securities.

(1) The commissioner may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:

(a) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) any provision of this act or any rule, order, or condition lawfully imposed under this act has been wilfully violated, in connection with the offering by (a) the person filing the registration statement, (b) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person

filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (c) any underwriter;

(c) the security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (a) the commissioner may not institute a proceeding against an effective registration statement under this clause more than one (1) year from the date of the injunction relied on, and (b) he may not enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for an order under this section;

(d) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) when a security is sought to be registered by notification, it is not eligible for such registration;

(g) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 9(g) [15-2009(g)];

(h) the applicant or registrant has failed to pay the proper registration fee; but the commissioner may enter only a denial order under this subsection and he shall vacate any such order when the deficiency has been corrected, or

(i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options.

(2) The commissioner may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective.

(3) Upon the entry of an order under subdivision (1) of this section, the commissioner shall promptly notify the issuer of the securities and the applicant or registrant that an order has been entered and of the reasons therefor and that if requested by the issuer or registrant within fifteen (15) days after the receipt of the commissioner's notification the matter will be set promptly down for hearing. If no hearing is requested within fifteen (15) days and none is ordered by the commissioner the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing may affirm, modify or vacate the order.

History: En. Sec. 12, Ch. 251, L. 1961.

15-2013. Exempt securities. Sections 7 through 12 [15-2007 through 15-2012], inclusive, of this act shall not apply to any of the following securities:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state,

or any agency or corporate or other instrumentality of one (1) or more of the foregoing; or any certificate of deposit for any of the foregoing.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized or chartered as such and under the jurisdiction and supervision of the superintendent of banks of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner.

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) subject to the jurisdiction of the interstate commerce commission; (b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection.

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes.

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current trans-

action, and which evidences an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies.

(11) Any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan.

History: En. Sec. 13, Ch. 251, L. 1961.

Act of 1935, referred to in subd. (7) of this section, is compiled as sections 79 to 79z-6, Title 15, U. S. Code.

Compiler's Note

The Public Utility Holding Company

15-2014. Exempt transactions. Except as hereinafter in this section expressly provided, sections 6 through 12 [15-2006 through 15-2012] inclusive of this act shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not.

(2) Any non-issuer distribution of an outstanding security by a registered broker-dealer if (a) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen (18) months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest, or dividends on the security.

(3) Any non-issuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator, in the performance of his official duties as such.

(6) Any transaction executed by a bona fide pledgee without any purpose of evading this act.

(7) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(8) Any transaction pursuant to an offer directed by the offerer to not more than ten (10) persons (other than those designated in subsection (7)) in this state during any period of twelve (12) consecutive months, whether or not the offerer or any of the offerees is then present in this state, if (a) the seller reasonably believes that all the buyers are purchas-

ing for investment, and (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer.

(9) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten (10), and (c) no payment is made by any subscriber.

(10) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, non-transferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection.

(11) Any offer (but not a sale) of a security for which registration statements have been filed under both this act and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(12) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(13) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation or sale of assets.

The commissioner may by order deny or revoke the exemption specified in subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this act by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order.

History: En. Sec. 14, Ch. 251, L. 1961.

Compiler's Notes

The Investment Company Act of 1940, referred to in subd. (7) of this section, is compiled as sections 80a-1 to 80a-52, Title 15, U. S. Code.

The Securities Act of 1933, referred to in subd. (11) of this section, is compiled as sections 77a to 77aa, Title 15, U. S. Code.

15-2015. Consent to service of process. Every applicant for registration as a broker-dealer or investment adviser or salesman under this act, and every issuer which proposes to register and offer a security in this state through any person acting on an agency basis in the common law sense, shall file with the commissioner, in such form as he prescribes, an irrevocable consent appointing the commissioner and his successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or its or his successor, executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at its or his last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

History: En. Sec. 15, Ch. 251, L. 1961; first sentence for "offer a security in this state."
amd. Sec. 1, Ch. 105, L. 1963.

Amendment

The 1963 amendment substituted "register and offer a security in this state through any person acting on an agency basis in the common law sense" in the

Effective Date

Section 2 of Ch. 105, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

15-2016. Fees. The following fees shall be paid in advance under the provisions of this act:

(1) For the registration of securities by notification or coordination or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of one hundred dollars (\$100.00) for the first one hundred thousand dollars (\$100,000.00) of initial issue, or portion thereof in this state, based on offering price; plus one-twentieth (1/20th) of one per cent (1%) for any excess over one hundred thousand dollars (\$100,000.00), with a maximum of one thousand dollars (\$1,000.00).

Each year thereafter that a registration remains in effect for securities with respect to which reports are required to be filed under subsection (4)(a) of section 11 [15-2011], an additional registration fee shall be paid to the commissioner to be computed at one-twentieth (1/20th) of one per cent (1%) of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00). The registration statement for such securities may be amended to increase the amount of securities to be offered. When an application for registration of securities is denied or withdrawn the commissioner shall retain fifty dollars (\$50.00) of the fee.

(2) For filing an annual statement, the fee shall be ten dollars (\$10.00).

(3) For registration of a broker-dealer or investment adviser, the fee shall be one hundred dollars (\$100.00) for original registration and one hundred dollars (\$100.00) for each annual renewal thereof. When an application is denied or withdrawn the commissioner shall retain one-half ($\frac{1}{2}$) of the fee.

(4) For registration of a salesman, the fee shall be ten dollars (\$10.00) for original registration with each employer; ten dollars (\$10.00) for each annual renewal. When an application is denied or withdrawn the commissioner shall retain one-half ($\frac{1}{2}$) of the fee.

(5) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

History: En. Sec. 16, Ch. 251, L. 1961.

15-2017. Misleading filings. It is unlawful for any person to knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

History: En. Sec. 17, Ch. 251, L. 1961.

15-2018. Unlawful representation concerning registration or exemption. Neither the fact that an application for registration under section 6(2) [15-2006(2)], a registration statement under sections 8, 9 or 10 [15-2008, 15-2009 or 15-2010] has been filed, nor the fact that a person or security is effectively registered, constitutes a finding by the commissioner that any document filed under this act is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

History: En. Sec. 18, Ch. 251, L. 1961.

15-2019. Investigations and subpoenas. (1) The commissioner in his discretion (1) may make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this act or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under this act, the commissioner or any officer designated by him may administer oaths

and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(a) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.

(b) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History: En. Sec. 19, Ch. 251, L. 1961.

15-2020. Injunctions. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.

History: En. Sec. 20, Ch. 251, L. 1961.

15-2021. Criminal liabilities. (1) Any person who wilfully violates any provision of this act except section 17 [15-2017], or who wilfully violates any rule or order under this act, or who wilfully violates section 17 [15-2017] knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than five thousand dollars (\$5,000.00) or imprisoned not more than three (3) years, or both; however, in the event the person so convicted has been previously convicted of a felony in any way involving securities, imprisonment hereunder for not less than one (1) year shall be mandatory. No indictment or information may be returned under this act more than five (5) years after the alleged violation.

(2) The commissioner may refer such evidence as may be available concerning violations of this act or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, institute the appropriate criminal proceedings under this act.

(3) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime.

History: En. Sec. 21, Ch. 251, L. 1961.

15-2022. Civil liabilities. (1) Any person who offers or sells a security in violation of any provisions of sections 7 through 10 [15-2007 through 15-2010] of this chapter or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six per cent (6%) per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six per cent (6%) per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer or director (or person occupying a similar status or performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller, if the non-seller knew or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section more than two (2) years after the contract of sale. No person may sue under this section (a) if the buyer has received a written offer at a time when he owned the security, to refund the consideration paid together with interest at six per cent (6%) per annum from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty (30) days of its receipt, or (b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under section 22(1) [(1) of this section] of this title upon a tender less (1) the value of the security when the buyer disposed of it and (2) interest at six per cent (6%) per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of this act or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance

was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this act or any rule or order hereunder is void as against public policy and in the public interest.

History: En. Sec. 22, Ch. 251, L. 1961.

15-2023. Judicial review of orders. Any person aggrieved by a final order of the commissioner may obtain a review of the order in any court of competent jurisdiction by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the commissioner as to the facts, if supported by creditable evidence, are conclusive, unless appealed from. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the taking of additional evidence in such manner and upon such conditions as the court may consider proper. The commencement of proceedings under this action does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

History: En. Sec. 23, Ch. 251, L. 1961.

15-2024. Administration of act. (1) The administration of the provisions of this act shall be under the general supervision and control of the state auditor, the ex officio investment commissioner. The commissioner may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the provisions of this act. No rule or form may be made unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act. In prescribing rules and forms the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this act to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) Any issuer or broker-dealer who is investigated or examined in connection with a registration under this act shall reimburse the commissioner, or any of his duly authorized agents, officers or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, all at reasonable rates customary therefore and as established and adopted by the commissioner, upon the effective date of this act and annually thereafter, upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his

written authorization. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received hereunder.

If any issuer or broker-dealer fails to pay the charges and expenses referred to above the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such issuer or broker-dealer, and may be recovered by suit by the attorney general on behalf of the state of Montana, and restored to the appropriate fund. Failure of such issuer or broker-dealer to pay such charges and expenses shall also work a forfeiture of his or its right to do business in this state under this act.

(3) It is unlawful for the commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this act authorizes the commissioner or any of his officers or employees to disclose any such information or the fact that any investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under this act.

(4) No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(5) Every hearing in an administrative proceeding shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(6) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under this act and all denial, suspension, or revocation orders which have ever been entered under this act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the commissioner prescribes.

(7) Upon request and at such reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified.

History: En. Sec. 24, Ch. 251, L. 1961; amd. Sec. 71, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the second paragraph of subsection (2) for a paragraph reading, "There is hereby cre-

ated in the state treasury a special fund to be known as the 'Investment Department Examinations Revolving Fund.' The commissioner shall pay to the state treasurer to the credit of this special fund all moneys received hereunder. This fund shall be used only for or toward payment

of travel, living allowance and other expenses incurred by the commissioner and his examiners in the making of examinations under this code, and the compensation of such examiners, upon such bases as the commissioner may fix for the purposes of this section. In lieu of deposit thereof in such fund, the commissioner

may give written authorization for payment, by the person examined, of such travel expenses and living allowance direct to the examiner. Any other law of this state to the contrary notwithstanding, the travel expense and living allowance of examiners shall be as fixed by the commissioner pursuant to this section."

15-2025. Proof of exemption. In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

History: En. Sec. 25, Ch. 251, L. 1961.

Permits under Prior Law

Section 26 of Ch. 251, Laws 1961, provided for continuation of permits issued under prior law, as follows: "All effective permits issued under prior law relating to the sale of any security and all conditions imposed upon such permits shall remain in effect so long as they would have remained in effect had they become effective under this act subject, however, to the payment on September 1, 1961 by the issuer of such securities of a renewal registration fee required by section 16 [15-2016] of this act. All stockbrokers and salesmen registered under prior law on the effective date of this act shall be deemed duly registered under and subject to the provisions of this act, such registration to expire on March 1, 1962 and to be subject to renewal as provided in this act."

Separability Clause

Section 27 of Ch. 251, Laws 1961 read "Constitutionality. If any part or parts of this act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts

of this act if it had known that such part or parts thereof would be declared unconstitutional."

Repealing Clause

Section 28 of Ch. 251, Laws 1961 read "That section 66-2001; section 66-2002, as amended by section 1, Chapter 178, Laws of Montana, 1957; section 66-2003, as amended by section 2, Chapter 178, Laws of Montana, 1957; sections 66-2004 through 66-2006; section 66-2007, as amended by section 3, Chapter 178, Laws of Montana, 1957; sections 66-2008 through 66-2017; section 66-2018, as amended by section 4, Chapter 178, Laws of Montana, 1957; sections 66-2019 through 66-2022; section 66-2023, as amended by section 5, Chapter 178, Laws of Montana, 1957; section 66-2024, as amended by section 6, Chapter 178, Laws of Montana, 1957; sections 66-2025 and 66-2026, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 29 of Ch. 251, Laws 1961 read "This act shall be in full force and effect from and after July 1, 1961."

CHAPTER 21—PROFESSIONAL SERVICE CORPORATIONS

Section	15-2101.	Legislative intent.
	15-2102.	Title.
	15-2103.	Definitions.
	15-2104.	Previously existing corporations.
	15-2105.	Purpose for which incorporated.
	15-2106.	How service rendered.
	15-2107.	Relationship to person served.
	15-2108.	Limitation on other business.
	15-2109.	Restrictions on shareholders.
	15-2110.	Disqualification of officers, employees or shareholders.
	15-2111.	Transfer of shares.
	15-2112.	Name.
	15-2113.	Board of directors.
	15-2114.	Application of corporation law.
	15-2115.	Annual report.
	15-2116.	Savings clause.

15-2101. Legislative intent. It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the

same professional service to the public for which such individuals are required by law to be licensed or to have obtained other legal authorization.

History: En. Sec. 3, Ch. 161, L. 1963.

15-2102. Title. This act may be cited as "The Professional Service Corporation Act."

History: En. Sec. 4, Ch. 161, L. 1963.

15-2103. Definitions. As used in this act, the following words shall have the meaning indicated:

(1) The term "professional service" means any professional service rendered by attorneys, certified public accountants, public accountants, chiropractors, dentists, osteopaths, doctors of medicine, chiroprodists, architects, veterinarians, optometrists, nurses and professional engineers.

(2) The term "professional corporation" means a corporation which is organized under this act for the sole and specific purpose of rendering professional service, and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

History: En. Sec. 5, Ch. 161, L. 1963; **amnd. Sec. 1, Ch. 56, L. 1965.** public accounts" in paragraph (1); and inserted "nurses" near the end of paragraph (1).

Amendment

The 1965 amendment substituted "certified public accountants" for "certified

15-2104. Previously existing corporations. This act shall not apply to any individuals or groups of individuals within this state who prior to the passage of this act were permitted to organize a corporation and perform personal services to the public by the means of a corporation, and this act shall not apply to any corporations organized by such individual or group of individuals prior to the passage of this act; provided, however, any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of this act by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this act and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this act.

History: En. Sec. 6, Ch. 161, L. 1963.

15-2105. Purpose for which incorporated. An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of the corporation act of Montana for the sole and specific purpose of rendering the same and specific professional service.

History: En. Sec. 7, Ch. 161, L. 1963.

15-2106. How service rendered. No corporation organized and incorporated under this act may render professional services except through its officers, employees and agents who are duly licensed or otherwise legally

authorized to render such professional services within this state; provided, however, this provision shall not be interpreted to include in the term "employee" as used herein clerks, secretaries, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

History: En. Sec. 8, Ch. 161, L. 1963.

15-2107. Relationship to person served. Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict or limit the law or professional ethics now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct. Any officer, shareholder, agent or employee or a corporation organized under this act shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered, and the corporation shall also be liable for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, agents or employees while they are engaged on behalf of the corporation in the rendering of professional services.

History: En. Sec. 9, Ch. 161, L. 1963.

15-2108. Limitation on other business. No corporation organized under this act shall engage in any business other than the rendering of the professional services for which it was specifically incorporated; provided, however, nothing in this act or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, mortgages, stocks, bonds or any other type of investments, or from owning real or personal property necessary for the rendering of professional services.

History: En. Sec. 10, Ch. 161, L. 1963.

15-2109. Restrictions on shareholders. No corporation organized under the provisions of this act may issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated. No individual shall hold stock or in any way have any interest in more than one (1) corporation organized under this act. No shareholder of a corporation organized under this act shall enter into a voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of his stock.

History: En. Sec. 11, Ch. 161, L. 1963.

15-2110. Disqualification of officers, employees or shareholders. If any officer, shareholder, agent or employee of a corporation organized under this act who has been rendering professional service to the public becomes

legally disqualified to render such professional services within this state, he shall sever all employment with, and financial interests in, such corporation forthwith. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the office of the secretary of state, the secretary of state forthwith shall certify that fact to the attorney general for appropriate action to dissolve the corporation.

History: En. Sec. 12, Ch. 161, L. 1963.

15-2111. Transfer of shares. No shareholder of a corporation organized under this act may sell or transfer his shares in such corporation except to another individual who is eligible to be a shareholder of such corporation, and such sale or transfer may be made only after the same shall have been approved, at a stockholders' meeting, by such proportion, not less than a majority, of the outstanding stock as may be provided in the certificate of incorporation or in the by-laws. At such shareholders' meeting the shares of stock held by the shareholder proposing to sell or transfer his shares may not be voted or counted for any purpose. The articles of incorporation may provide specifically for additional restraints on the alienation of shares, and may require the redemption or purchase of such shares by the corporation at prices and in a manner specifically set forth in such articles, or the articles may specifically authorize the corporation's board of directors or its shareholders to adopt by-laws or resolutions restraining the alienation of shares and providing for the purchase or redemption by the corporation of its shares; provided, however, such provisions dealing with the purchase or redemption by the corporation of its shares may not be invoked at a time or in a manner that would impair the capital of the corporation.

History: En. Sec. 13, Ch. 161, L. 1963.

15-2112. Name. Every corporation organized under this act and transacting business in this state under a fictitious name or a designation not showing the names of all the shareholders in such corporation, shall file and publish, or cause to be filed and published, the certificates described in sections 63-601, 63-602 and 63-603, R.C.M., 1947. Any such corporation doing business contrary to the provisions of this section shall be subject to the disabilities and provisions of section 63-602, R.C.M., 1947. Every corporation organized under this act is prohibited from advertising the professional services rendered by the members of said corporation.

History: En. Sec. 14, Ch. 161, L. 1963.

15-2113. Board of directors. The number of shareholder members of the board of directors may be less than the number of shareholders, except that if a corporation has only one (1) shareholder, the board may consist of such shareholder.

History: En. Sec. 15, Ch. 161, L. 1963.

15-2114. Application of corporation law. Montana statutes shall be applicable to a corporation organized pursuant to this act, except to the

extent that any of the provisions of this act are interpreted to be in conflict with the provisions of such statutes, and in such event the provisions and sections of this act shall take precedence with respect to a corporation organized pursuant to the provisions of this act. A professional corporation organized under this act shall consolidate or merge only with another domestic professional corporation organized under this act to render the same specific professional service, and a merger or consolidation with any foreign corporation is prohibited.

History: En. Sec. 16, Ch. 161, L. 1963.

15-2115. Annual report. The annual report of a professional corporation shall list the names and post office addresses of all shareholders, and shall certify that all shareholders are duly licensed or otherwise legally authorized in this state to render the same professional service as the corporation.

History: En. Sec. 17, Ch. 161, L. 1963.

15-2116. Savings clause. The provisions of this act shall not be construed as repealing, modifying or restricting the applicable provisions of law relating to incorporations, sales of securities or regulating the several professions enumerated in this act, except insofar as such laws conflict with the provisions of this act.

History: En. Sec. 19, Ch. 161, L. 1963.

Separability Clause

Section 18 of Ch. 161, Laws 1963 read "Severability. If any provision of this act or the application thereof to any person

or circumstances is invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

TITLE 16—COUNTIES

- Chapter 9. County commissioners—organization—meetings—compensation, 16-910, 16-912.
10. General powers and duties of county commissioners, 16-1001, 16-1004, 16-1004.1, 16-1008A, 16-1008B, 16-1009, 16-1015, 16-1030, 16-1031, 16-1036 to 16-1041.
 11. Special powers and duties of county commissioners, 16-1122.1, 16-1131.
 12. County printing—commissioners to contract for, 16-1203 to 16-1205, 16-1208, 16-1210, 16-1212 to 16-1214, 16-1217, 16-1219.
 13. County farm bureaus, 16-1303.
 15. County land advisory board, 16-1510.
 16. Rural improvement districts, 16-1601(1), 16-1601(2), 16-1602, 16-1605.1 to 16-1605.4, 16-1607, 16-1613, 16-1620, 16-1626, 16-1629, 16-1633 to 16-1638.
 17. Weed control, 16-1706, 16-1708, 16-1708.1 to 16-1708.3, 16-1713, 16-1723.
 18. Claims against counties, county warrants, 16-1802, 16-1803.
 19. County budget system, 16-1904, 16-1907.
 20. County finance—bonds and warrants, 16-2001, 16-2008, 16-2010, 16-2012, 16-2026, 16-2028, 16-2033, 16-2044, 16-2050.
 24. County officers—qualifications—general provisions, 16-2414, 16-2428 to 16-2431.
 26. County treasurer—duties as to warrants and other county finances, 16-2618.
 27. Sheriff, 16-2723.
 28. County jails, 16-2818.
 29. County clerk, 16-2903, 16-2905, 16-2922, 16-2923, 16-2926.
 31. County attorney, 16-3101.
 32. County auditor, 16-3201, 16-3205.
 33. County surveyor, 16-3302.
 34. County coroner, 16-3410.
 36. Constable and justices of the peace, 16-3605.
 44. Metropolitan sanitary and/or storm sewer systems, 16-4401 to 16-4418.
 45. County water districts, 16-4501 to 16-4534.
 46. Dog licensing, 16-4601 to 16-4615.
 47. Zoning districts, 16-4701 to 16-4710.

CHAPTER 2—COUNTY BOUNDARIES

16-225. (4328) Lewis and Clark County.

References

Cited in McCafferty v. Young, — M —,
397 P 2d 96.

16-252. (4352) Teton County.

References

Cited in McCafferty v. Young, — M —,
397 P 2d 96.

CHAPTER 8—GENERAL POWERS AND LIMITATIONS UPON COUNTIES

16-801. (4441) Every county a body corporate.

References

Helena Gun Club v. Lewis and Clark
County, 141 M 490, 379 P 2d 436.

16-804. (4444) Enumeration of powers.**Tax Sales**

Board of county commissioners has the power and the authority to dispose of and convey real estate acquired through tax deeds. *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 502.

In the sale of land acquired by tax deed, county had the power to reserve the right to take road building material from the land for authorized public purpose. *Helena Gun Club v. Lewis and Clark County*, 141 M 490, 379 P 2d 436.

16-809. (4448) Superseded—Supreme Court Order 10750.**Supersession**

This section (Sec. 4197, Pol. C. 1895), relating to service of process in actions

against counties, is superseded by M. R. Civ. P., Rule 4 D as amended by Sup. Ct. Ord. 10750.

16-810. (4449) Inhabitants of county, competency as jurors, etc.**County Taxpayers as Jurors**

Where county brought an action for damages done to bridge struck by defendant's truck, it was not an abuse of discretion for the district court to deny a motion for a change of venue even

though the jury was made up, necessarily, of taxpayers of that county each of whom had a pecuniary interest of \$31. *Carter County v. Cambrian Corp.*, 143 M 193, 387 P 2d 904.

CHAPTER 9—COUNTY COMMISSIONERS—ORGANIZATION— MEETINGS—COMPENSATION

Section 16-910. Regular meetings—extra sessions.

16-912. Compensation of members of board.

16-910. (4462) Regular meetings—extra sessions. The board of county commissioners, except as may be otherwise required of them, may meet at the county seat of their respective counties on the first and third Mondays of each and every month of the year, except when meeting as the county board of equalization as provided by law, for the purpose of allowing bills and attending to any other business that may regularly come before them, and may sit not exceeding three days at each session, except the December session, at which time they may sit not exceeding eight days. But the board may at any time, by giving at least two days' posted public notice, hold an extra session of not over two days' duration; provided, that the limitations as to the time of sessions of the board of county commissioners contained in this section shall not apply to counties of the first, second, third or fourth classes.

History: Ap. p. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R. C. M. 1921; amd. Sec. 1, Ch. 35, L. 1929; amd. Sec. 1, Ch. 132, L. 1959. Cal. Pol. C. Sec. 4032.

Amendment

The 1959 amendment added the provision for meeting on the third Monday in each month and added the words "except when meeting as the county board of equalization as provided by law."

Repealing Clause

Section 2 of Ch. 132, Laws 1959 repealed all acts and parts of acts in conflict therewith.

16-912. (4464) Compensation of members of board. Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary as hereinafter set forth:

First class	\$5,600.00
Second class	\$5,475.00

Third class	\$5,375.00
Fourth class	\$5,275.00

Each member of the board of county commissioners in all other counties is entitled to twenty dollars (\$20.00) per day for each day's attendance on the sessions of the board, and eight cents (8¢) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties, and no other compensation must be allowed.

Salaries of the members of the board of county commissioners of a county shall not be changed during the entire term for which such members are elected, regardless of any change in the classification of the county during such term. If a vacancy occurs on the board of county commissioners, the person who is appointed and/or elected to fill the unexpired term shall receive the same salary as the person vacating the office.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965.

The 1965 amendment increased the annual salaries of county commissioners from \$5,000 to \$5,600 in first class counties, from \$4,900 to \$5,475 in second class counties, from \$4,800 to \$5,375 in third class counties, and from \$4,700 to \$5,275 in fourth class counties; and increased the per diem rate in other counties from \$15 to \$20.

Amendments

The 1957 amendment added the first paragraph with classifications first through fourth, in the second paragraph inserted the words "in all other counties" and substituted "fifteen dollars (\$15.00)" for "twelve dollars (\$12.00)."

The 1963 amendment increased the commissioners' mileage allowance specified in the second paragraph from 7¢ to 8¢ per mile; and added the third paragraph.

Repealing Clauses

Section 2 of Ch. 238, Laws 1957 and Sec. 2 of Ch. 113, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 113, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

CHAPTER 10—GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

- Section 16-1001. Powers of supervision—indemnity insurance premiums.
 16-1004. Roads, ferries, and bridges.
 16-1004.1. Reseeding of right of way areas.
 16-1008A. Erection and management of county buildings and other improvements.
 16-1008B. Establishment of joint county youth guidance centers.
 16-1009. Sale of property.
 16-1015. Taxation.
 16-1030. Lease of county property.
 16-1031. Garbage and ash collection—tax—rates in lieu of tax.
 16-1036. Lease of county property for boarding home or nursing home for aged persons.
 16-1037. County construction and operation of boarding home or nursing home for aged.
 16-1038. Services provided at county home.
 16-1039. Joint hospitals and nursing homes—definition of terms.
 16-1040. Joint institutions authorized.
 16-1041. Contract for joint institution.

16-1001. (4465) Powers of supervision—indemnity insurance premiums. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:

To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, charged with assessing, collecting, safekeeping, management or disbursement of the public revenues; see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary require them to renew their official bonds; to make reports and to present their books and accounts for inspection; and it may, in its discretion pay a proper charge to any insurance company authorized to do business in this state for effecting insurance providing indemnity for, or protection to, any county officer against his liability for the loss, without fault, connivance or neglect on his part, of money, securities or other property, for which he is accountable to the county.

History: Secs. 4465-4465.29, R. C. M. 1935, en. as Sec. 4230, Pol. C. 1895; re-en. Sec. 2894, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1919; Subd. 5 amd. Sec. 1, Ch. 84, L. 1919; amd. Sec. 1, Ch. 94, L. 1919; re-en. Sec. 4465, R. C. M. 1921; amd. Sec. 1, Ch. 95, L. 1923; amd. Sec. 1, Ch. 54, L. 1927; amd. Sec. 1, Ch. 38, L. 1929; Subd. 28 amd. Sec. 1, Ch. 142, L. 1929; amd. Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 16, L. 1965. Cal. Pol. C. Sec. 4046.

Amendment

The 1965 amendment added the final clause authorizing the payment of indemnity insurance charges.

Repealing Clause

Section 2 of Ch. 16, Laws 1965 repealed all acts and parts of acts in conflict therewith.

16-1004. (4465.3) Roads, ferries, and bridges. The board of county commissioners under such limitations and restrictions as are prescribed by law may:

(1) Lay out, maintain, control, and manage county roads, ferries, and bridges within the county.

(2) Levy taxes therefor as provided by law.

(3) In the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage and improve county roads, ferries, and bridges in adjacent counties, wholly or in such part as may be agreed upon between the boards of the counties concerned.

(4) Levy taxes therefor as provided by law.

(5) Enter into agreements for adjusted annual contributions over not more than six (6) years toward the cost of joint highway or bridge construction projects entered into in co-operation with other counties, or the state or the United States.

(6) Place such a project in the budget and levy taxes therefor as provided by law. [Effective December 31, 1966.]

History: En. Subd. 4, Sec. 1, Ch. 100, L. 1931; amd. Sec. 12-101, Ch. 197, L. 1965. See history of Sec. 16-1001.

Amendment

The 1965 amendment divided the former second paragraph into separate numbered clauses; substituted "county roads" for "public highways" in clauses (1) and (3); and made several minor changes in phraseology and format.

Cross-Reference

Flood control projects of counties, secs. 89-3301 to 89-3313.

References

Helena Gun Club v. Lewis and Clark County, 141 M 490, 379 P 2d 436.

16-1004.1. Reseeding of right of way areas. Whenever the natural sod cover is disturbed on right of way areas for construction of county roadways, irrigation ditches, drain ditches or other types of construction on such right of way, it shall be the duty of the county commissioners to see that such disturbed areas are seeded to an adaptable perennial grass or combination of perennial grasses and/or legumes whenever they believe it is practical to do so, using seed meeting certified standards. Time and method of seeding, fertilizing practices and grass species shall be recommended and specified by the Montana extension service. Every effort will be made to establish a sod cover on the newly cut-over area.

History: En. Sec. 2, Ch. 222, L. 1961.

Ch. 197, Laws 1965, effective December 31, 1966.

Compiler's Note

Section 1 of Ch. 222, Laws 1961, is compiled as sec. 32-1606.1.

Repealing Clause

Section 3 of Ch. 222, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Repeal

This section is repealed by Sec. 12-109,

16-1008A. (4465.8) Erection and management of county buildings and other improvements. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained a courthouse, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof, and such other public buildings as may be necessary.

The board of county commissioners shall have the power in their discretion to create a commission for the management of such civic center, youth center, park buildings, museums, county parks, recreation centers, hospitals, or any combination of two (2) or more thereof. Such commission shall be composed of the senior district court judge of the county, chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above-named buildings are situated, and the mayor of the city in such district, and five (5) lay members to be appointed by the senior district court judge, the chairman of the board of county commissioners, the chairman of the school board for the district in which any of the above-named buildings are situated, and the mayor of the city in such district, and their terms of office shall be respectively one (1) for one (1), two (2) for two (2), and two (2) for three (3) years, and on the expiration of such terms of one (1), two (2) and three (3) years, their successors shall hold for three (3) years each, and all of the above persons shall serve without compensation. In cases where a commission has been appointed, the commission together with the board of county commissioners shall have the power to employ a manager.

A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been, or which may hereafter be, erected and furnished under the provisions of this act may also be used for the hospitalization of the nonindigent sick, provided said nonindigent sick pay a reasonable fee for such hospitalization, and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would

be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959. See history of Sec. 16-1001.

Amendments

The 1957 amendment in the third paragraph deleted the words "and which has been, or may be, leased, as provided by section 16-1032," which appeared in the second sentence immediately following the words "provisions of this act" and also deleted a former last paragraph which read "Nothing herein contained shall be construed as amending or repealing sections 16-1163 to 16-1165."

The 1959 amendment in the first sentence of the second paragraph, inserted the words "county parks."

Repealing Clause

Section 2 of Ch. 76, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Cross-References

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

Industrial development buildings, secs. 11-4101 to 11-4110.

16-1008B. Establishment of joint county youth guidance centers. Two or more counties of this state, may through action of their respective boards of county commissioners, join together by contract in the establishment of a joint county youth guidance center. The cost and expenses of such joint county youth guidance center shall be apportioned between or among the contracting counties on such a basis as to be agreed upon by said contracting counties.

History: En. Sec. 1, Ch. 24, L. 1961.

Title of Act

An act to permit two or more counties, by contract, to establish joint county

youth guidance centers; to provide for apportionment of costs among the contracting counties on such a basis to be agreed upon by said contracting counties.

16-1009. (4465.9) Sale of property. (1) The board of county commissioners of the several counties in this state shall have the power to sell any property, real or personal, however acquired, belonging to the county, and which is not necessary to the conduct of the county's business or the preservation of its property. If the property, real or personal, sought to be sold, is reasonably of a value in excess of one hundred (\$100.00) dollars, the sale shall be at public auction at the courthouse door after previous notice given by publication in a newspaper published in said county, notice to be published once a week for four successive weeks and posted in five (5) public places in the county. The sale shall be for cash, or on such terms as the board of county commissioners may approve, provided at least twenty per cent (20%) of the purchase price shall be paid in cash. In all sales of property of a value in excess of one hundred (\$100.00) dollars, there must before any sale be an appraisal thereof by the board and at a price representing a fair market value of such prop-

erty, and such appraised value shall be stated in the notice of sale, provided, that whenever a county purchases equipment, as provided in section 16-1803, Revised Codes of Montana, 1947, county equipment which is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal as herein provided, or may be sold at public auction as herein provided, in the discretion of the board of county commissioners.

(2) The board of county commissioners shall have the power to sell any property, real or personal, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property, to the school district directly for its appraised value which shall represent a fair market value of such property without the necessity of a public auction. If the property to be sold to the school district is reasonably of a value in excess of one hundred (\$100.00) dollars, notice of the sale shall be given by publication in a newspaper in said county, notice to be published once a week for four (4) successive weeks and posted in five (5) public places in the county.

(3) Any taxpayer who may believe that such appraised value is less than the actual value of the property, may at any time before the day fixed for the sale of such property, file with the board of county commissioners written objections to such appraised value. When any such objection is filed it vacates the sale and the board of county commissioners must at once apply to the judge of the district court to have such property re-appraised. Upon such application the district judge shall appoint for such purpose three (3) disinterested persons whose appraisal must be made and filed with the county clerk and recorder, which new appraisal or re-appraisal shall be used in the next sale of such property. Such appraisers, when appointed by the district judge, and after filing their appraisal report with the county clerk and recorder, shall be allowed five dollars (\$5.00) per day for each day necessarily employed in making such appraisal, and their necessary and actual expenses. No sale shall be made at public auction or to any school district without public auction of any property unless it has been appraised within three (3) months prior to the date of the sale, and no such sale shall be made for less than ninety per cent (90%) of the appraised value.

(4) If no bid or offer is made for any property offered for sale at public auction, after appraisal and notice given, as provided herein, the board of county commissioners may, at any time thereafter, sell such property at private sale, and may on such private sale accept as the purchase price therefor an amount not less than ninety per cent (90%) of the appraised value thereof. All deferred payments on the purchase price of any property sold, shall bear interest at the rate of six per cent (6%) per annum, payable annually and may be extended over a period of not more than five (5) years. If the property to be sold is reasonably of a value of less than one hundred dollars (\$100.00), sale thereof may be had at either public or private sale, as in the discretion of the board of county commissioners, may appear to be to the best interests of the county. If it be at public sale, notice shall be given by posting in five (5) public places in the county at least five (5) days before the date of sale. No

title to any property sold under the provisions hereof, shall pass from the county until the purchaser, or his assigns, shall have paid the full amount of the purchase price therefor, into the county treasury for the use and benefit of the county.

(5) Provided, however, if within one (1) year no immediate sale be had of real estate attempted to be sold under the provisions of this section, the board of county commissioners may make trades or exchanges of such real estate owned by the county for any other lands or real estate of equal value located within the same county.

(6) The funds derived from the sale in the discretion of the board of county commissioners may be credited to a construction reserve account and thereafter used for capital outlay for present or future construction of or an addition to a courthouse, or county jail or county hospital.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957. See history of Sec. 16-1001.

Amendment

The 1957 amendment inserted new subds. (2) and (6) and renumbered former subds. (2) to (4) as (3) to (5) and in the last sentence of subd. (3) inserted the words "or to any school district without public auction."

Repealing Clause

Section 2 of Ch. 110, Laws 1957 re-

pealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 110, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 5, 1957.

Tax Sales

Board of county commissioners has the power and the authority to dispose of and convey real estate acquired through tax deeds. *Flom v. Unknown Heirs of Conrad*, 132 M 574, 319 P 2d 499, 502.

16-1015. (4465.12) Taxation. The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law: To levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding sixteen (16) mills, except as hereinafter provided, on each dollar of the taxable valuation for any one (1) year to levy such taxes as are required to be levied by special or local statutes. Provided, however, that on and after July 1, 1965, and extending to June 30th, 1967, the board of county commissioners is authorized in its discretion to levy an additional four (4) mills on each dollar of the taxable valuation for any one (1) year, provided, however, after that period of time the levy of sixteen (16) mills shall still be in effect.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957; amd. Sec. 1, Ch. 212, L. 1959; amd. Sec. 1, Ch. 205, L. 1961; amd. Sec. 1, Ch. 33, L. 1963; amd. Sec. 1, Ch. 18, L. 1965. See history of Sec. 16-1001.

Amendments

The 1957 amendment substituted "July 1, 1957" for "July 1, 1955" and "June 30th, 1959" for "June 30th, 1957."

The 1959 amendment inserted the words "except as hereinafter provided"; substituted "July 1, 1959" and "June 30th, 1961" for "July 1, 1957" and "June 30th, 1959" respectively; substituted "an additional four (4) mills" for "not to exceed twenty (20) mills" and added the last proviso in this section.

The 1961 amendment substituted "July 1, 1961" for "July 1, 1959" and "June 30th, 1963" for "June 30th, 1961" in the last sentence.

The 1963 amendment substituted "July 1, 1963" for "July 1, 1961" and "June 30th,

1965" for "June 30th, 1963" in the last sentence.

The 1965 amendment substituted "July 1, 1965" for "July 1, 1963" and "June 30, 1967" for "June 30, 1965" in the last sentence.

Repealing Clauses

Section 2 of Ch. 48, Laws 1957, Sec. 2 of Ch. 212, Laws 1959 and Sec. 2 of Ch. 205, Laws 1961 repealed all acts and parts of acts in conflict therewith.

16-1030. (4465.27) Lease of county property. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. Such leases shall be in such manner and for such purposes as, in the judgment of the board, shall seem best suited to advance the public benefit and welfare, and all revenue derived therefrom, except as otherwise provided, shall be paid into the county treasury. On the tenth day of January and the tenth day of July in each year the county treasurers shall distribute such revenues to the several county and trust and agency funds on the basis of the tax levy for the preceding calendar year. All such property must be leased subject to sale by the board, and no lease shall be for a period to exceed ten (10) years, save and except as to deposits of coal only or coal and the surface above the same, owned by any county or to which any county has heretofore or may hereafter acquire title by tax title, tax deed or otherwise, which lease or leases may be for a period of ten years and to run and continue as long thereafter as coal is being mined and extracted from the leased property in commercial quantities and that as to all such deposits of coal only or coal and surface the provisions of section 2208.1 and 2235 of the Revised Codes of the state of Montana, A. D. 1935 and all other provisions of the laws of Montana relating to the sale by the county commissioners of a county of property owned by the county or acquired by tax title or otherwise shall be suspended during the time any such lease or leases of coal only or coal and surface made hereunder shall be in force and effect.

History: En. Subd. 28, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959. See history of Sec. 16-1001.

Compiler's Note

Sections 2208.1 and 2235, referred to in this section, were repealed by Sec. 10, Ch. 171, Laws 1941.

Amendment

The 1959 amendment increased the maximum period of leases, other than coal leases, from 3 years to 10 years.

Repealing Clause

Section 2 of Ch. 11, Laws 1959 repealed all acts or parts of acts in conflict therewith.

16-1031. (4465.28) Garbage and ash collection—tax—rates in lieu of tax. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To create, abolish and change garbage and ash collection districts in thickly settled areas outside of the limits of incorporated cities and towns. Such districts shall be created under rules to be promulgated by said board, which rules shall provide for petition on the part of a majority of taxpayers residing within such areas, for the survey of proposed districts by the county health officer as to boundaries and methods for disposal of garbage and ashes

within such districts. When such a district has been created under the authority of this section the county commissioners shall be authorized and empowered to levy not to exceed two (2) mills on the taxable property within such district for the maintenance and support thereof and for the purchase or leasing of land necessary for said purpose. In lieu of such levy, the county commissioners may provide for the collection and disposal of garbage and ashes for such districts by authorizing individual contractors or firms to perform such services under a system of rates approved by the commissioners. Such rates shall be applied on a fair and equal basis to all persons utilizing such garbage collection service within a district and all rates so established shall be in relation to the amount and manner of collection and disposal service provided to the various types of customers within a district; provided, however, that in no event shall any fee exceed the amount of two dollars and fifty cents (\$2.50) per month for a family residential unit. Collection under such fees shall be an alternative to the tax levy authorized by this section, and no such levy shall be made upon taxable property within any district in which garbage collection service is provided by contractors or firms under rates established by the commissioners.

History: En. Subd. 29, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 108, L. 1947; amd. Sec. 1, Ch. 202, L. 1961. See history of Sec. 16-1001.

Amendment

The 1961 amendment substituted "two (2) mills" for "five (5) mills" in the third sentence and added the fourth, fifth, and sixth sentences.

Repealing Clause

Section 2 of Ch. 202, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 202, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 7, 1961.

16-1036. Lease of county property for boarding home or nursing home for aged persons. The board of county commissioners may lease and demise county buildings, equipment, furniture and fixtures for purpose of operation of a boarding home or nursing home for aged persons with full power of lessor, except as hereinafter limited, upon such terms and conditions as the board shall decide upon. The rentals received under such lease or leases shall be paid into the poor fund of the county. No such lease and demise shall be made for a longer period than five years, nor shall such board enter into a contract of lease without and until having advertised in a newspaper published in the county at least once a week for five weeks that the said buildings and equipment are for lease for the purpose of a boarding home or nursing home for aged persons.

History: En. Sec. 1, Ch. 87, L. 1963.

Title of Act

An act to authorize boards of county

commissioners to lease county facilities for the purpose of operating a boarding home or nursing home for the aged.

16-1037. County construction and operation of boarding home or nursing home for aged. The board of county commissioners may erect, equip, maintain, and operate a boarding home or nursing home for the aged subject to standards established by the state board of health.

History: En. Sec. 1, Ch. 88, L. 1963.

act shall be in full force and effect upon passage and approval.

Title of Act

An act to authorize boards of county commissioners to establish a county boarding home or nursing home for the indigent or non-indigent aged; providing this

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

16-1038. Services provided at county home. The county boarding home or nursing home shall provide care, nursing care, maintenance, board and room for the indigent aged. If facilities permit, the county boarding home or nursing home may provide similar services to non-indigent aged and shall charge and accept such reasonable payment for such care as is determined by the board of county commissioners.

History: En. Sec. 2, Ch. 88, L. 1963.

its passage and approval. Approved February 27, 1963.

Effective Date

Section 3 of Ch. 88, Laws 1963 provided the act should be in effect from and after

16-1039. Joint hospitals and nursing homes—definition of terms. As used in this act, the following definitions shall apply:

(1) "joint institution" means a county hospital or nursing home for the aged, constructed, purchased, leased, equipped, and operated by two or more counties pursuant to the terms of the contract creating it.

(2) "contract" means the agreement entered into by two or more counties for the purpose of creating a joint institution.

History: En. Sec. 1, Ch. 100, L. 1965.

ties to construct, purchase, lease, equip and operate a joint county hospital or nursing home for the aged; providing definitions.

Title of Act

An act authorizing two or more coun-

16-1040. Joint institutions authorized. Two or more counties may, by contract, create a joint institution which will be operated and financed by the contracting counties.

History: En. Sec. 2, Ch. 100, L. 1965.

16-1041. Contract for joint institution. The contract creating the joint institution shall provide:

(1) the total proposed expenditure for the construction, purchase or lease of the joint institution and the proposed cost of equipping and operating the joint institution. The total cost of the joint institution shall be divided between the contracting counties in such manner as they shall determine.

(2) for the management of the joint institution by a method which will provide that each contracting county shall be represented and have an active part in the management of the joint institution.

(3) that the management of the joint institution shall have such powers as will be necessary to accomplish the purpose of this act.

History: En. Sec. 3, Ch. 100, L. 1965.

CHAPTER 11—SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section 16-1122.1. Validation of mineral reservations made before 1965.

16-1131. Counties authorized to deed land for park to state, city, town, or United States—reversion of title.

16-1118. (4479) Repealed.

Repeal

This section (Sec. 3, Ch. 33, L. 1909), relating to public ferries uniting two coun-

ties, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

16-1122.1. Validation of mineral reservations made before 1965. All mineral reservations and all royalty reservations heretofore made by counties in this state in conveyances of real property whether the same are of a less or greater percentage or are different than was authorized or required by law at the time such reservations were made, and all agreements in connection with such reservations, heretofore made, are hereby ratified, confirmed and validated, provided no action is now pending to set aside any such reservation.

History: En. Sec. 1, Ch. 59, L. 1965.

Title of Act

An act to validate all royalty and minerals reservations and agreements applicable thereto, heretofore made by counties, containing a repealing clause.

Repealing Clause

Section 2 of Ch. 59, Laws 1965 repealed all acts and parts of acts in conflict therewith.

16-1126. (4486) Special counsel—acting county attorney.

Presumption of Regular Appointment

On appeal from a conviction for assault which was prosecuted by a special prosecutor where the record does not show whether any appointment was made un-

der this section, the court will indulge the presumption that the appointment was regularly made in the absence of a showing to the contrary. *State v. Cockrell*, 131 M 254, 309 P 2d 316, 319.

16-1127, 16-1128. (4486.1, 4486.2) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 153, L. 1933; Sec. 1, Ch. 33, L. 1955), relating to livestock fences and gates along and

across county and public roads, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

16-1131. (4487.1) Counties authorized to deed land for park to state, city, town, or United States—reversion of title. The county commissioners of any county in the state of Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county owned land not exceeding one thousand two hundred eighty acres (1,280), to be used for the establishment and maintenance of a park and to be maintained by the state, city, town or federal government as a public park or recreational grounds. Said land shall be deeded to the state, city, town or federal government without charge, but upon the condition that the same shall be devoted and maintained by the state, city, town or federal government for the purpose specified in this act, and in the event that said land shall cease to be used for such purposes for a period of five (5) years in succession, the title thereto shall revert to the county making such grant.

History: En. Sec. 1, Ch. 139, L. 1935; amd. Sec. 1, Ch. 48, L. 1961.

Amendment

The 1961 amendment inserted the words "or to any city or town in Montana" near the beginning of the first sentence and in-

serted "city, town" in the three other places where those words appear.

Repealing Clause

Section 2 of Ch. 48, Laws 1961 repealed all acts and parts of acts in conflict therewith.

16-1136. (4488) County commissioners may erect market houses, etc.

Cross-Reference

Building specifications for accommoda-

tion of handicapped persons, secs. 69-3701 to 69-3719.

16-1161. (4520) Liability on official bond of commissioner.

Management of County Property

Owners of land adjacent to county farm could not recover damages from the county commissioners for flooding such

land by waters from county farm caused by tenant's handling of waste irrigation water improperly. *Goetschius v. Lasich*, 137 M 465, 353 P 2d 87, 94.

16-1179. County-owned civic center, youth center, etc.

Cross-Reference

Building specifications for accommoda-

tion of handicapped persons, secs. 69-3701 to 69-3719.

16-1180, 16-1181. Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 49, L. 1957), relating to standards and county

permits for installation of electrical equipment, were repealed by Sec. 21, Ch. 148, Laws 1965.

CHAPTER 12—COUNTY PRINTING—COMMISSIONERS TO CONTRACT FOR

Section 16-1203. Envelopes.

16-1204. Letterheads.

16-1205. Legal blanks.

16-1208. Tax receipts in quintuple and more or less copies.

16-1210. Imprinting corner cards on government stamped envelopes and printing post cards, stock furnished.

16-1212. Special ruled and printed forms.

16-1213. Bound books.

16-1214. Size 18 x 11½ record books only.

16-1217. Stock forms without county name.

16-1219. Bids, how made—other prices.

16-1203. Envelopes.

	500	1000	Add'l. 1000
White Wove 6¾-24 Grade 400.....	\$ 9.45	\$13.50	\$ 7.75
6¾-28 Grade 450.....	9.75	14.10	8.40
10-24 Grade 600.....	10.70	16.05	10.35
10-28 Grade 700.....	11.35	17.35	11.60
White Bond 6¾-20 Grade 400.....	9.45	13.50	7.75
10-20 Grade 600.....	10.70	16.05	10.35
Manila or Kraft			
6¾-20 Grade 400.....	8.80	12.20	6.80
10-28 Grade 700.....	10.10	14.75	9.40
12-28 Grade 1000.....	11.35	17.35	11.95

History: En. Sec. 3, Ch. 118, L. 1937, amd. Sec. 1, Ch. 250, L. 1947; amd. Sec.

1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 1, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all grades

and price listings. For section prior to amendment see parent volume.

16-1204. Letterheads.

	250	500	1000	Add'l. 1000
8½ x 7-16 or 20, Grade 35-----	\$10.25	\$12.05	\$15.10	\$ 6.25
8½ x 7-16 or 20, Grade 60-----	10.75	13.10	17.15	8.15
8½ x 11-16 or 20, Grade 35-----	11.25	13.15	16.95	7.40
8½ x 11-16 or 20, Grade 60-----	12.50	14.75	20.20	10.00

History: En. Sec. 4, Ch. 118, L. 1937; amd. Sec. 2, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 2, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all grades and price listings. For section prior to amendment see parent volume.

16-1205. Legal blanks.

	250	500	1000	Add'l. 1000
7 x 8½, printed one side-----	\$11.00	\$12.95	\$16.20	\$ 8.55
7 x 8½, printed two sides-----	17.00	19.30	23.10	9.10
8½ x 14, printed one side-----	16.40	19.15	24.10	10.00
8½ x 14, printed two sides-----	22.90	26.05	31.60	11.10
8½ x 28, printed one side-----	33.30	38.20	47.60	18.75
8½ x 28, printed two sides-----	44.40	49.60	59.20	22.20

History: En. Sec. 5, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 3, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised the price listings. For section prior to amendment see parent volume.

16-1208. Tax receipts in quintuple and more or less copies. Perforated, gathered, numbered, different color paper for each sheet, bound in books of 50 sets each complete.

	500 or Less	1000	2000	3000	Add'l. 1000
Size 8½ x 11 -----	\$57.65	\$85.20	\$141.75	\$194.25	\$55.10
If additional sheet, add -----	4.15	7.55	13.05	18.55	5.50
Add for extra color----	3.40	7.65	10.00	13.40	3.40
If statement printed on other side add--	5.05	9.65	13.05	16.50	3.40
Size 9¼ x 11¾ or 8½ x 14 -----	67.20	98.00	160.10	221.60	61.60
If additional sheet add	5.50	8.90	14.40	20.60	6.55
Add for extra color----	4.15	7.20	10.65	14.05	3.40
If statement printed on other side add--	6.90	10.35	13.75	17.15	3.40
Size 10¾ x 16¾ or 11 x 17 -----	87.90	125.45	202.60	277.90	75.30
If additional sheet add	7.20	11.60	18.15	27.25	8.15
Add for extra color----	4.85	7.90	11.35	14.20	4.15
If statement printed on back add -----	7.60	11.00	13.85	17.85	4.15

To ascertain price on more than five (5) copies (quintuple) add for each additional sheet: for less than five (5) copies, deduct for each sheet at rate set forth above for sizes specified.

History: En. Sec. 8, Ch. 118, L. 1937;
amd. Sec. 5, Ch. 250, L. 1947; amd. Sec.
1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138,
L. 1951; amd. Sec. 4, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price listings. For section prior to amendment see parent volume.

16-1210. Imprinting corner cards on government stamped envelopes and printing post cards, stock furnished.

	500	1000	2000	3000	Add'l. 1000
Envelopes	\$ 6.85	\$ 8.35	\$11.25	\$14.10	\$ 3.85
Post Cards, 1 side					
printed	7.65	9.55	13.45	17.35	3.75
Both sides printed.....	13.25	17.30	24.70	32.10	7.25

History: En. Sec. 10, Ch. 118, L. 1937;
amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec.
1, Ch. 138, L. 1951; amd. Sec. 5, Ch. 200,
L. 1957.

Amendment

The 1957 amendment raised all price listings. For section prior to amendment see parent volume.

16-1212. Special ruled and printed forms. Prices apply to both sides ruled different with deductions for ruling and printing the same both sides or rule and printed one side only. Prices include punching for loose leaf holders with rings or posts and green edging of sheets. Numbering of guide lines printed along binding edge of sheet, add one dollar and fifty cents (\$1.50) for each guide line.

8½ x 11 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 37.35	\$ 44.05	\$ 55.75	\$ 19.40
Grade 60-32 Sub.	37.65	44.75	57.10	22.55
Grade 110-36 Sub.	40.45	50.45	68.35	33.85
Deduct if both sides alike.....	6.05	5.95	5.80	.30
Deduct if printed and ruled, 1 side only	9.35	10.30	12.10	3.00

8½ x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 43.45	\$ 50.75	\$ 63.95	\$ 24.00
Grade 60-32 Sub.	43.90	51.55	65.60	25.80
Grade 110-36 Sub.	47.40	58.80	79.85	40.10
Deduct if both sides ruled and printed alike	8.80	8.70	8.50	.30
Deduct if ruled and printed, 1 side only	11.20	12.10	13.90	3.35

9¼ x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 48.30	\$ 57.20	\$ 73.30	\$ 31.70
Grade 60-32 Sub.	48.95	58.35	75.70	31.15
Grade 110-36 Sub.	54.10	68.35	95.40	53.05
Deduct if both sides ruled and printed alike	8.80	8.70	8.50	.30
Deduct if ruled and printed, 1 side only	11.20	12.10	13.90	3.35

9½ x 12 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 39.30	\$ 46.60	\$ 59.80	\$ 23.40
Grade 60-32 Sub.	39.65	47.45	61.50	25.00
Grade 110-36 Sub.	43.15	54.35	75.25	38.90
Deduct if both sides ruled and printed alike	6.65	6.55	6.40	.30
Deduct if ruled and printed, 1 side only	9.70	10.60	12.40	3.00

9½ x 24 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 66.00	\$ 77.75	\$100.75	\$ 41.70
Grade 60-32 Sub.	66.85	79.50	102.70	45.05
Grade 110-36 Sub.	73.80	93.25	130.20	72.60
Deduct if both sides ruled and printed alike	13.70	13.45	13.20	.30
Deduct if ruled and printed, 1 side only	16.70	17.90	20.30	6.70

10½ x 16 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 53.40	\$ 63.25	\$ 81.10	\$ 33.25
Grade 60-32 Sub.	54.15	64.40	83.60	35.75
Grade 110-36 Sub.	59.30	74.60	103.80	52.25
Deduct if both sides ruled and printed alike	10.60	10.50	10.30	.60
Deduct if ruled and printed, 1 side only	13.00	14.20	16.40	3.30

11 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 46.40	\$ 55.35	\$ 71.40	\$ 31.60
Grade 60-32 Sub. -----	57.05	56.55	73.90	33.90
Grade 110-36 Sub. -----	52.15	66.50	93.55	53.00
Deduct if both sides ruled and printed alike -----	8.20	8.10	7.20	.30
Deduct if ruled and printed, 1 side only -----	9.70	10.60	12.40	3.35

11 x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 56.05	\$ 66.00	\$ 84.90	\$ 31.10
Grade 60-32 Sub. -----	56.80	67.40	87.75	38.20
Grade 110-36 Sub. -----	62.30	78.60	110.20	60.60
Deduct if both sides ruled and printed alike -----	11.30	11.15	11.00	.60
Deduct if ruled and printed, 1 side only -----	13.70	14.90	17.00	3.65

11¼ x 24½ TOTAL OF 16 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 74.40	\$ 88.00	\$ 113.30	\$ 46.40
Grade 60-32 Sub. -----	75.55	90.10	117.50	50.55
Grade 110-36 Sub. -----	83.95	107.00	151.20	84.25
Deduct if both sides ruled and printed alike -----	15.20	15.00	14.75	.60
Deduct if ruled and printed, 1 side only -----	17.90	19.40	21.85	3.65

12 x 9½ TOTAL OF 8 UNIT COLUMNS, BOTH SIDES
Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 37.95	\$ 45.25	\$ 58.40	\$ 23.50
Grade 60-32 Sub. -----	38.30	46.10	60.15	25.20
Grade 110-36 Sub. -----	41.55	53.00	73.90	38.95
Deduct if both sides ruled and printed alike -----	6.40	6.30	6.20	.30
Deduct if ruled and printed, 1 side only -----	9.45	10.30	12.10	3.05

12 x 19 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 62.70	\$ 74.55	\$ 96.10	\$ 39.90
Grade 60-32 Sub.	63.60	76.20	99.45	43.30
Grade 110-36 Sub.	70.50	89.95	127.00	70.80
Deduct if both sides ruled and printed alike	13.10	12.90	12.60	.30
Deduct if ruled and printed, 1 side only	16.10	17.30	19.70	3.35

12 x 23 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 73.45	\$ 87.00	\$112.00	\$ 46.00
Grade 60-32 Sub.	74.60	89.20	116.25	50.20
Grade 110-36 Sub.	83.05	97.40	149.65	83.60
Deduct if both sides ruled and printed alike	14.95	14.75	14.50	.60
Deduct if ruled and printed, 1 side only	17.30	18.80	21.25	3.65

12 x 28 TOTAL OF 18 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 94.75	\$113.50	\$146.10	\$ 60.60
Grade 60-32 Sub.	96.00	116.00	151.20	65.90
Grade 110-36 Sub.	106.45	136.90	193.05	107.60
Deduct if both sides ruled and printed alike	23.10	22.90	22.70	.60
Deduct if ruled and printed, 1 side only	24.10	25.45	28.80	5.70

14 x 17 TOTAL OF 12 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 61.65	\$ 72.30	\$ 94.80	\$ 40.05
Grade 60-32 Sub.	62.40	74.90	98.30	43.65
Grade 110-36 Sub.	69.75	89.25	127.15	72.10
Deduct if both sides ruled and printed alike	12.80	12.60	12.35	.30
Deduct if ruled and printed, 1 side only	14.65	16.10	18.50	3.35

14 x 22 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 77.50	\$ 92.20	\$119.95	\$ 53.75
Grade 60-32 Sub. -----	78.85	94.60	124.90	58.65
Grade 110-36 Sub. -----	88.50	114.10	163.60	97.35
Deduct if both sides ruled and printed alike -----	18.00	17.90	17.65	.60
Deduct if ruled and printed, 1 side only -----	19.45	21.30	24.00	4.50

14 x 34 TOTAL OF 20 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$111.75	\$131.90	\$170.35	\$ 74.85
Grade 60-32 Sub. -----	113.55	135.45	177.45	81.80
Grade 110-36 Sub. -----	127.95	163.90	234.40	138.85
Deduct if both sides ruled and printed alike -----	26.70	26.50	26.30	.60
Deduct if ruled and printed, 1 side only -----	28.50	30.30	33.60	5.75

17 x 11 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 51.25	\$ 60.50	\$ 79.30	\$ 34.95
Grade 60-32 Sub. -----	52.10	62.30	82.10	37.75
Grade 110-36 Sub. -----	57.60	73.45	104.55	60.20
Deduct if both sides ruled and printed alike -----	10.70	10.55	10.40	.30
Deduct if ruled and printed, 1 side only -----	12.40	13.60	15.80	3.30

17 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub. -----	\$ 57.90	\$ 69.40	\$ 90.50	\$ 39.70
Grade 60-32 Sub. -----	58.70	71.05	94.00	43.30
Grade 110-36 Sub. -----	65.90	84.85	122.85	71.70
Deduct if both sides ruled and printed alike -----	12.50	12.30	12.05	.30
Deduct if ruled and printed, 1 side only -----	13.70	14.90	17.30	3.35

17 x 22 TOTAL OF 14 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 81.90	\$ 97.80	\$128.25	\$ 59.00
Grade 60-32 Sub.	83.30	100.70	133.90	64.60
Grade 110-36 Sub.	94.60	123.15	178.80	119.50
Deduct if both sides ruled and printed alike	18.85	18.70	18.55	.60
Deduct if ruled and printed, 1 side only	21.25	23.05	25.80	4.50

17 x 28 TOTAL OF 18 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$102.00	\$123.85	\$162.85	\$ 74.20
Grade 60-32 Sub.	103.65	127.40	169.95	81.15
Grade 110-36 Sub.	118.05	155.85	226.90	138.20
Deduct if both sides ruled and printed alike	24.30	24.10	23.90	.60
Deduct if ruled and printed, 1 side only	26.10	27.90	31.20	5.75

17 x 46 TOTAL OF 28 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$161.90	\$202.05	\$269.40	\$119.65
Grade 60-32 Sub.	164.65	207.85	277.70	131.05
Grade 110-36 Sub.	188.80	254.25	371.40	224.05
Deduct if both sides ruled and printed alike	40.75	40.30	39.85	.90
Deduct if ruled and printed, 1 side only	40.60	42.40	47.40	9.40

18 x 11½ TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 56.50	\$ 67.70	\$ 87.90	\$ 37.45
Grade 60-32 Sub.	52.30	69.25	91.05	40.60
Grade 110-36 Sub.	68.00	81.75	115.95	65.40
Deduct if both sides ruled and printed alike	11.60	11.40	11.05	.30
Deduct if ruled and printed, 1 side only	14.00	15.50	17.30	3.35

18 x 23 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 94.45	\$114.85	\$150.90	\$ 67.70
Grade 60-32 Sub.	95.90	118.00	157.30	73.85
Grade 110-36 Sub.	108.45	142.90	207.10	123.85
Deduct if both sides ruled and printed alike	23.70	23.50	23.30	.60
Deduct if ruled and printed, 1 side only	24.90	26.70	30.00	5.75

18 x 46 TOTAL OF 32 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$170.30	\$209.10	\$276.60	\$127.95
Grade 60-32 Sub.	173.50	215.30	289.90	140.70
Grade 110-36 Sub.	198.00	264.70	389.25	240.55
Deduct if both sides ruled and printed alike	47.70	47.60	47.50	1.20
Deduct if ruled and printed, 1 side only	46.70	48.80	55.50	10.75

19 x 12 TOTAL OF 8 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 59.00	\$ 70.70	\$ 94.60	\$ 39.90
Grade 60-32 Sub.	59.85	72.40	95.55	43.30
Grade 110-36 Sub.	66.75	86.20	123.15	70.80
Deduct if both sides ruled and printed alike	11.90	11.70	11.35	.30
Deduct if ruled and printed, 1 side only	14.60	16.10	17.90	3.35

19 x 24 TOTAL OF 16 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 99.60	\$121.10	\$159.45	\$ 72.15
Grade 60-32 Sub.	101.30	124.50	166.20	78.90
Grade 110-36 Sub.	115.10	152.00	221.20	133.65
Deduct if both sides ruled and printed alike	24.00	23.80	23.60	.60
Deduct if ruled and printed, 1 side only	25.50	27.30	30.60	5.75

20 x 14 TOTAL OF 10 UNIT COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$ 68.85	\$ 82.40	\$108.15	\$ 48.00
Grade 60-32 Sub.	69.85	84.50	112.35	53.35
Grade 110-36 Sub.	78.10	101.50	146.05	87.10
Deduct if both sides ruled and printed alike	16.15	16.00	15.85	.30
Deduct if ruled and printed, 1 side only	16.40	17.00	19.70	4.55

20 x 28 TOTAL OF 18 COLUMNS, BOTH SIDES

Extra Unit Columns 85 cents each

	250	500	1000	Add'l. 1000
Grade 60-28 Sub.	\$114.85	\$137.10	\$180.70	\$ 83.85
Grade 60-32 Sub.	116.95	141.40	189.45	92.20
Grade 110-36 Sub.	133.90	175.05	256.45	159.55
Deduct if both sides ruled and printed alike	26.10	25.90	25.70	.60
Deduct if ruled and printed, 1 side only	27.30	29.10	32.40	5.75

History: En. Sec. 12, Ch. 118, L. 1937;
amd. Sec. 8, Ch. 250, L. 1947; amd. Sec. 1,
Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L.
1951; amd. Sec. 6, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised grade and
price listings. For section prior to amend-
ment see parent volume.

16-1213. Bound books.

Bound books, ruled, printed and paged on 36 Sub. No. 1, 100% rag ledger.
Patent back, flat opening. Complete, including lettering back or side title.

The first dimension listed is the binding margin. When greater or
intermediate lengths of sheets are furnished with a binding size as listed,
the difference between two given lengths is added or subtracted in the cor-
rect proportion to either of the given lengths to cover the length of sheet
actually furnished. When an intermediate binding size is furnished, the
next larger binding size shall be used.

SIZE 10½ x 16—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head.....	\$ 82.55	\$ 88.65	\$ 95.05	\$ 97.95	\$104.40
¾ Russia, Printed Page.....	92.15	98.15	104.15	105.05	114.00
Full Russia, Printed Head.....	95.30	101.35	107.75	111.60	117.25
Full Russia, Printed Page.....	104.95	110.90	117.45	121.30	126.80
Add for folio printed head	\$11.20				
Add for folio printed page	\$20.75				
Add for each printed guide line	\$1.95				
Add for index ruled	\$8.85				
Add for index through book	\$3.40				

SIZE 11½ x 18—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 89.95	\$ 96.00	\$102.65	\$106.15	\$112.20
¾ Russia, Printed Page-----	101.65	107.75	114.25	117.85	123.90
Full Russia, Printed Head----	102.20	108.15	114.60	118.45	123.95
Full Russia, Printed Page----	113.85	119.85	126.20	130.15	134.30
Add for folio printed head	\$11.70				
Add for folio printed page	\$23.35				
Add for each printed guide line	\$1.95				
Add for index ruled	\$8.85				
Add for index through book	\$3.55				

SIZE 12 x 19 OR 14 x 17—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 92.35	\$ 98.60	\$105.15	\$108.75	\$114.75
¾ Russia, Printed Page-----	105.55	111.80	118.30	121.95	128.00
Full Russia, Printed Head----	104.75	111.10	117.65	121.60	127.25
Full Russia, Printed Page----	117.90	124.15	130.80	134.80	140.40
Add for folio printed head	\$12.15				
Add for folio printed page	\$25.35				
Add for each printed guide line	\$1.95				
Add for index ruled	\$8.85				
Add for index through book	\$3.55				

SIZE 14 x 8½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 75.65	\$ 81.55	\$ 88.45	\$ 91.70	\$ 97.65
¾ Russia, Printed Page-----	89.35	95.20	102.10	105.45	111.15
Full Russia, Printed Head----	85.55	91.30	98.15	101.70	107.20
Full Russia, Printed Page----	101.90	105.05	111.85	115.45	121.50
Add for folio printed head	\$8.60				
Add for folio printed page	\$22.75				
Add for each printed guide line	\$1.95				
Add for index ruled	\$8.85				
Add for index through book	\$3.40				

SIZE 14 x 20—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 96.65	\$103.10	\$110.65	\$113.90	\$120.90
¾ Russia, Printed Page-----	111.85	118.30	125.85	129.10	136.10
Full Russia, Printed Head----	111.15	117.45	124.75	128.75	134.60
Full Russia, Printed Page----	126.25	132.60	139.95	143.85	149.90
Add for folio printed head	\$12.60				
Add for folio printed page	\$27.95				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.35				
Add for index through book	\$3.55				

SIZE 16 x 10½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 89.10	\$ 91.90	\$100.65	\$104.50	\$108.15
¾ Russia, Printed Page-----	99.40	107.20	115.95	119.85	127.60
Full Russia, Printed Head-----	96.70	104.45	113.15	118.45	124.75
Full Russia, Printed Page-----	111.95	119.65	128.35	133.70	139.95
Add for folio printed head	\$10.60				
Add for folio printed page	\$25.85				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.35				
Add for index through book	\$3.55				

SIZE 16 x 21—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$113.10	\$123.25	\$134.30	\$139.50	\$150.55
¾ Russia, Printed Page-----	131.35	141.50	152.55	157.70	168.80
Full Russia, Printed Head-----	130.60	140.65	151.70	159.75	167.70
Full Russia, Printed Page-----	148.85	158.85	169.90	177.95	185.95
Add for folio printed head	\$13.20				
Add for folio printed page	\$31.45				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.80				
Add for index through book	\$3.75				

SIZE 17 x 14 OR 19 x 12—6 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 91.95	\$ 99.85	\$108.80	\$112.75	\$121.70
¾ Russia, Printed Page-----	110.25	118.10	127.05	131.05	139.95
Full Russia, Printed Head-----	104.20	112.10	121.00	127.60	133.90
Full Russia, Printed Page-----	122.45	123.85	139.30	145.85	152.15
Add for folio printed head	\$11.70				
Add for folio printed page	\$30.10				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.35				
Add for index through book	\$3.55				

SIZE 17 x 28—10 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head -----	\$135.40	\$146.30	\$158.30	\$163.80	\$171.70
¾ Russia, Printed Page-----	157.70	168.60	180.55	186.10	198.00
Full Russia, Printed Head-----	154.50	165.25	177.45	186.15	194.95
Full Russia, Printed Page-----	176.80	187.85	199.75	208.50	217.20
Add for folio printed head	\$14.15				
Add for folio printed page	\$36.55				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.80				
Add for index through book	\$4.00				

SIZE 18 x 11½—5 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$ 90.15	\$ 98.00	\$107.00	\$110.45	\$124.95
¾ Russia, Printed Page-----	107.90	115.85	124.40	128.20	137.55
Full Russia, Printed Head-----	102.10	109.90	118.65	124.95	131.15
Full Russia, Printed Page-----	119.90	127.65	136.35	142.70	149.00
Add for folio printed head	\$11.15				
Add for folio printed page	\$28.85				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.35				
Add for index through book	\$3.35				

SIZE 18 x 23—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$122.45	\$132.85	\$144.75	\$149.40	\$160.70
¾ Russia, Printed Page-----	144.00	154.40	165.70	170.80	182.20
Full Russia, Printed Head-----	141.85	152.10	163.50	171.65	179.80
Full Russia, Printed Page-----	164.60	173.60	184.95	193.10	201.25
Add for folio printed head	\$13.70				
Add for folio printed page	\$34.95				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.80				
Add for index through book	\$3.90				

SIZE 19 x 24—8 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$127.25	\$137.75	\$149.25	\$154.40	\$165.60
¾ Russia, Printed Page-----	150.00	160.55	172.00	177.80	182.50
Full Russia, Printed Head-----	146.50	157.10	170.55	177.60	185.20
Full Russia, Printed Page-----	169.35	179.80	191.35	199.70	207.95
Add for folio printed head	\$14.70				
Add for folio printed page	\$37.50				
Add for each printed guide line	\$1.95				
Add for index ruled	\$9.80				
Add for index through book	\$4.00				

SIZE 21 x 16—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head-----	\$108.40	\$118.30	\$129.35	\$134.25	\$145.20
¾ Russia, Printed Page-----	130.20	140.15	151.05	156.05	167.00
Full Russia, Printed Head-----	125.85	135.60	146.25	154.10	161.90
Full Russia, Printed Page-----	147.55	157.45	168.15	175.95	183.75
Add for folio printed head	\$12.60				
Add for folio printed page	\$34.45				
Add for each printed guide line	\$1.95				
Add for index ruled	\$10.40				
Add for index through book	\$4.05				

SIZE 28 x 17—7 UNIT COLUMNS TO PAGE

Extra Unit Columns 85 cents each

No. Pages	300	400	500	560	640
¾ Russia, Printed Head	\$124.00	\$134.30	\$146.25	\$150.25	\$161.45
¾ Russia, Printed Page	154.45	164.70	176.65	180.75	191.90
Full Russia, Printed Head	143.20	153.65	165.50	170.15	181.80
Full Russia, Printed Page	173.60	184.10	195.90	200.60	212.20
Add for folio printed head	\$13.20				
Add for folio printed page	\$43.70				
Add for each printed guide line	\$1.95				
Add for index ruled	\$10.85				
Add for index through book	\$4.00				

History: En. Sec. 13, Ch. 118, L. 1937;
amd. Sec. 9, Ch. 250, L. 1947; amd. Sec. 1,
Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L.
1951; amd. Sec. 7, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price
listings. For section prior to amendment
see parent volume.

16-1214. Size 18 x 11½ record books only.

Loose Leaf Style With Binder

No. Pages	560	640
Marginal record ruled stock form grade 110, 36 Sub.		
Full Russia stock ruled not printed	\$64.20	\$68.20
Full Russia, Printed Head	71.80	76.05
Full Russia, Printed Page	91.80	91.10
Add for folio printed head	\$ 4.50	
Add for folio printed page	\$24.50	
Add for A-Z index	\$ 7.55	
Loose leaf record binders only, full Russia, letter with back title 7 or 8 quire capacity, each		\$42.50

History: En. Sec. 14, Ch. 118, L. 1937;
amd. Sec. 10, Ch. 250, L. 1947; amd. Sec.
1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138,
L. 1951; amd. Sec. 8, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price
listings. For section prior to amendment
see parent volume.

16-1217. Stock forms without county name.

Budget form CB-2—per 100		\$ 7.15
Budget form CB-3—per 100		7.15
Budget form CB-4—per 100		7.35
Budget form CB-5—per 100		8.50
Budget form CB-6—per 100		8.50
Budget form CB-7—per 100		22.00
Justice docket, size 320 pages, each		\$30.00
Report of justice fees received, size 14 x 17, ruled and printed one side, per 100		7.50
Teachers' registers, six week, each		\$ 1.25
District school budget applications, form 1	100	6.50
	Additional 100	5.50
High school budget application sheets	100	7.00
	Additional 100	6.00

Elementary and high school budget record sheets, ruled and printed one side, size 16¾ x 26 -----				50	8.50
				Additional 100	14.75
School census reports -----				per 250	7.00
				per 500	12.00
Teachers' contracts -----				per 50	4.00
				per 100	5.50
Trustees' annual reports -----				per 50	6.00
				per 100	10.00
Teachers' reports -----				per 250	10.50
				per 500	15.00
Superintendent's or principal's reports -----				per 100	5.00
				Additional per 100	4.50
For 1-time Carbon and N.C.R. (carbonized paper forms) see paragraph 2, section 19.					

History: En. Sec. 17, Ch. 118, L. 1937; amd. Sec. 13, Ch. 250, L. 1947; amd. Sec. 1, Ch. 127, L. 1949; re-en. Sec. 1, Ch. 138, L. 1951; amd. Sec. 9, Ch. 200, L. 1957.

Amendment

The 1957 amendment raised all price listings, substituted "Elementary and high

school budget record sheets, ruled and printed one side, size 16¾ x 26" for "District school budget record sheets, ruled and printed one side, size 13¾ x 21¾" and added the last classification pertaining to carbon.

16-1219. Bids, how made—other prices. Bids may be made either on the entire act, or bids may be made under each section. If each section is bid upon separately the section must be bid upon in its entirety and not upon individual items in such section.

All other blank books, 1-time carbon, carbonized paper, and printed forms not covered herein shall be furnished at prices not in excess of the prices for such work as set forth in the current Franklin Printing Catalog list, or by authority of the board of county commissioners at the price mutually agreed upon.

History: En. Sec. 19, Ch. 118, L. 1937; amd. Sec. 1, Ch. 127, L. 1949; amd. Sec. 1, Ch. 138, L. 1951; amd. Sec. 10, Ch. 200, L. 1957.

Amendment

The 1957 amendment in the second paragraph substituted the words "1-time carbon, carbonized paper, and printed

forms" for the words "and printing" and added the words "or by authority of the board of county commissioners at the price mutually agreed upon."

Repealing Clause

Section 11 of Ch. 200, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 13—COUNTY FARM BUREAUS

Section 16-1303. Fees.

16-1303. (4544) Fees. The usual certificate fee shall be required to be paid to any county officer for filing of such articles of incorporation. For filing and recording the articles of incorporation and issuing the certificate of incorporation thereon, the secretary of state shall collect the same fee as for corporations organized under sections 15-1401 to 15-1406.

History: En. Sec. 3, Ch. 14, L. 1919;
re-en. Sec. 4544, R. C. M. 1921; amd. Sec.
8, Ch. 117, L. 1961.

Amendment

The 1961 amendment completely re-wrote this section. For section prior to amendment see parent volume.

CHAPTER 15—COUNTY LAND ADVISORY BOARD

Section 16-1510. Prior dispositions of property validated.

16-1510. Prior dispositions of property validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, such right, title, estate and interest as is purported to be transferred by such county in and to the property described or covered.

History: En. Sec. 1, Ch. 111, L. 1961.

Title of Act

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and all instruments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, such right, title and interest as is purported to be transferred by such county in

and to the property described or covered; containing a repealing clause and providing for an effective date.

Repealing Clause

Section 2 of Ch. 111, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 111, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

CHAPTER 16—RURAL IMPROVEMENT DISTRICTS

Section 16-1601(1), 16-1601(2). Rural improvement districts—creation and objects.

16-1602. Resolution of intention—publication, mailing and notice.

16-1605.1. Areas includable in district.

16-1605.2. Trustees to administer district including areas in more than one county.

16-1605.3. Terms of office of trustees—filling vacancies.

16-1605.4. Powers of board of trustees.

16-1607. Notice inviting proposals—publication and posting—opening bids—re-advertisement—contract for purchase.

16-1613. Tax levy—resolution—term of years.

16-1620. Form and terms of district warrants and bonds—payment of contracts.

16-1626. Definition of terms.

16-1629. Maintenance of lighting systems in rural improvement districts—contract for furnishing light—apportionment of costs—maintenance fund—lien of assessment.

16-1633. Rural special improvement district revolving fund.

16-1634. Moneys for fund—tax levy.

16-1635. Use of revolving fund—loans.

16-1636. Loan—lien—repayment.

16-1637. Excess moneys in revolving fund—transfer to general fund.

16-1638. Cancellation of record of extinguished liability accounts.

16-1601(1). (4574) Rural improvement districts—creation and objects. Whenever the public interest or convenience may require, and upon the

petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water, sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929; amd. Sec. 1, Ch. 30, L. 1961.

Compiler's Note

This section was amended twice in 1961, once by Ch. 30, approved February 15, and once by Ch. 134, approved March 2. Neither chapter mentioned nor contained the changes made by the other, and neither contained an effective date clause. The amendments do not appear to conflict and, if they are not in conflict, both

would be effective, except that there may be no authority for acquisition by purchase of devices intended to protect the safety of the public from open ditches carrying irrigation or other water. The section, as amended by Ch. 30, Laws 1961, is set out above; the section, as amended by Ch. 134, Laws 1961, is set out as section 16-1601(2), below.

Amendment

The 1961 amendment after the words "constructing and maintaining" inserted the words "devices intended to protect the safety of the public from open ditches carrying irrigation or other water."

16-1601(2). (4574) Rural improvement districts—creation and objects. Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase, and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

History: En. Sec. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1929; amd. Sec. 1, Ch. 134, L. 1961.

Compiler's Note

This section was amended twice in 1961, once by Ch. 30, approved February 15, and once by Ch. 134, approved March 2. Neither chapter mentioned nor contained the changes made by the other, and neither contained an effective date clause. The amendments do not appear to con-

flict and, if they are not in conflict, both would be effective, except that there may be no authority for acquisition by purchase of devices intended to protect the safety of the public from open ditches carrying irrigation or other water. The section, as amended by Ch. 134, Laws 1961, is set out above; the section, as amended by Ch. 30, Laws 1961, is set out as section 16-1601(1), above.

Amendment

The 1961 amendment inserted the words "or acquiring by purchase" after "constructing."

16-1602. (4575) Resolution of intention—publication, mailing and notice. Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and

state therein the general character of the improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof. Upon having passed such a resolution the board of county commissioners must give notice of the passage of such resolution of intention, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning property within the proposed district, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, or acquired by purchase, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice shall state the exact purchase price of such existing improvement.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R. C. M. 1921; amd. Sec. 2, Ch. 134, L. 1961.

Amendment

The 1961 amendment in the second paragraph after the words "proposed to be made," inserted the words "or acquired by purchase," and added the last sentence to the last paragraph.

16-1604. (4577) Protests against creation or extension of district, etc.

Operation and Effect

Where city agrees to provide water for a special improvement district the city does not have the duty or the obligation

to install at its own expense the water mains necessary. *Crawford v. City of Billings*, 130 M 158, 297 P 2d 292, 295.

16-1605.1. Areas includable in district. A rural improvement district, as authorized by sections 16-1601(1) and 16-1601(2), may include a part or all of any county or may include areas in more than one (1) county.

History: En. Sec. 1, Ch. 62, L. 1963.

Title of Act

An act authorizing the creation of a rural improvement district including areas

in more than one (1) county; providing the procedure of administration therefor; providing an effective date.

16-1605.2. Trustees to administer district including areas in more than one county. If a rural improvement district includes areas in more than one (1) county, the board of county commissioners of each county in which any portion of the district is situated shall, upon the creation of such district, and at a joint session, appoint a board of three (3) trustees to administer the affairs of the district.

History: En. Sec. 2, Ch. 62, L. 1963.

16-1605.3. Terms of office of trustees—filling vacancies. The trustees so appointed upon the creation of such district shall serve staggered terms of one (1), two (2), and three (3) years. At least one (1) trustee shall be appointed from each county within the district. The trustees so appointed shall hold office for the term of their respective appointment or until their successor is appointed and qualified. At the end of the respective terms of said trustees, the then board of county commissioners shall appoint a new trustee for a three (3) year term, and in case of a vacancy by death, resignation, removal from the district or otherwise a trustee shall be appointed by the board of county commissioners to fill such vacancy.

History: En. Sec. 3, Ch. 62, L. 1963.

16-1605.4. Powers of board of trustees. The board of trustees of a rural improvement district shall have all the powers and duties with respect to such district as the board of county commissioners has with respect to a district including the area of only one (1) county.

History: En. Sec. 4, Ch. 62, L. 1963.

its passage and approval. Approved February 21, 1963.

Effective Date

Section 5 of Ch. 62, Laws 1963 provided the act should be in effect from and after

16-1607. (4580) Notice inviting proposals—publication and posting—opening bids—re-advertisement—contract for purchase. (1) to (5). * * * [Same as parent volume.]

(6) If the proposed improvement consists of the purchase of an existing improvement, the board of county commissioners may, in their discretion, after the creation of the said special improvement district, and after ordering the proposed improvement, enter into a contract for the purchase of said improvement, upon such terms as they deem just, without advertising for bids, or proposals, provided, however, that the total purchase price shall not exceed the amount set forth in the notice required by section 16-1602.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 7, Ch. 147, L. 1921; re-en. Sec. 4580, R. C. M. 1921; amd. Sec. 3, Ch. 134, L. 1961.

Amendment

The 1961 amendment added subd. (6).

16-1611. (4584) Assessment of property—apportionment of costs, etc.

References

Cited or applied in *Crawford v. City of Billings*, 130 M 158, 297 P 2d 292, 298.

16-1613. (4586) Tax levy—resolution—term of years. To defray the cost of making improvements in any special improvement district, the board of county commissioners shall, by resolution, levy and assess a tax upon all property in the district created for such purpose, by using for a basis for such assessment the method provided for by this act. Such resolution shall contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent.

The payment of the assessment to defray the cost of constructing any improvements in special improvement districts may be spread over a term of not to exceed thirty (30) years, payment to be made in equal annual installments. If federal loans are available, payments may be spread over a term of not to exceed forty (40) years.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 13, Ch. 147, L. 1921; re-en. Sec. 4586, R. C. M. 1921; amd. Sec. 1, Ch. 140, L. 1947; amd. Sec. 1, Ch. 40, L. 1965.

Amendment

The 1965 amendment increased the period specified in the third sentence from twenty to thirty years and added the fourth sentence.

16-1620. (4593) Form and terms of district warrants and bonds—payment of contracts. (1) All costs and expenses incurred in the construction or maintenance of any improvement specified in this act, in any improvement district shall be paid for by special improvement district bonds, or warrants. Such bonds or warrants shall be drawn in substantially the following form:

District No. _____
United States of America
State of Montana

Warrant or _____ Dollars
(Bond No. _____) \$_____

Interest at the rate of _____ per cent per annum, payable annually.

Special Improvement District Coupon Warrant or Bonds

_____, Montana.

Issued by the County of _____, Montana.

The county treasurer of _____ County, Montana, will pay to _____, or bearer, the sum of _____ dollars, as authorized by Resolution No. _____, as passed on the _____ day of _____, 19____, creating or maintaining the Special Improvement District No. _____, for the construction (or maintenance) of the improvements and work performed as authorized in said resolution to be done in said district, and all laws, resolutions and ordinances relating thereto, in payment of the contract in accordance therewith. The principal and interest of this warrant (or bond) are payable at the office of the county treasurer of _____ County, Montana.

This warrant (or bond) bears interest at the rate of _____ per cent per annum from the date of the registration of this warrant (or bond), as expressed herein, until the date called for the redemption by the county treasurer. The interest on this warrant (or bond) is payable annually on the first day of _____ of each year, unless paid previous thereto and as expressed by the interest coupons hereto attached, which bear the signatures of the chairman of the board of county commissioners and the county clerk.

This warrant (or bond) is payable from the collection of a special tax or assessment which is a lien against the real estate within said improvement districts, as described in said resolution hereinbefore referred to.

This warrant (or bond) is redeemable at the option of the county at any time there are funds to the credit of said special improvement district fund (construction and maintenance) for the redemption thereof, and in the manner provided for the redemption of the same.

It is hereby certified and recited, that all things required to be done precedent to the issuance of this warrant (or bond) have been properly done, happened and been performed in the manner prescribed by the laws of the state of Montana and the resolution and ordinances of the county of _____, Montana, relating to the issuance thereof.

Dated at _____, Montana, this _____ day of _____, 19____, County of _____, Montana.

(SEAL)

By _____, chairman of the board of county commissioners.

(SEAL)

_____ County Clerk

Registered at the office of the county treasurer of _____ County, Montana this _____ day of _____, 19_____.

County Treasurer

(2) And the same shall be drawn against the special improvement district fund created for the district, that is, either the construction or maintenance fund as the case may be, and shall bear interest not to exceed six per cent per annum from the date of registration until called for redemption or paid in full, interest to be payable annually on the first day of January of each year, unless the board of county commissioners prescribe another date. Such warrants (or bonds) shall bear the signatures of the chairman of the board of county commissioners and the county clerk, and shall bear the corporate seal of the county. They shall be registered in the office of the county clerk and the county treasurer, and, if interest coupons be attached thereto, they shall also be so registered, and shall bear the signatures of the chairman of the board of county commissioners and the county clerk, provided however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners. Said bonds shall be in denominations of one hundred dollars (\$100) or fractions, or multiples thereof; and may be issued in installments, and may extend over a period of not to exceed thirty (30) years, except that if federal loans are available for improvements, repayment may extend over a period not to exceed forty (40) years.

(3) Such warrants (or bonds) shall be redeemed by the county treasurer when there are funds in the special improvement district fund against which said warrants (or bonds) are issued available therefor; provided that the county treasurer shall first pay out of the proper special improvement district fund, annually, the interest on all outstanding warrants (or bonds) on presentation of the coupons belonging thereto, and any funds remaining in the proper fund shall be applied to the payment

of the principal and the redemption of the warrants (or bonds) in order of their registration; provided, further, that whenever there are any funds in any special improvement district fund, after paying the interest on such warrants (or bonds) drawn against said fund, the county treasurer shall call in for payment outstanding warrants (or bonds), which, together with the interest thereon to the date of redemption, will equal the amount of said fund on that date, which date shall be fixed by the county treasurer, who shall give notice by publication once in a newspaper published in the city, or, at the option of the county treasurer, by written notice to the holder or holders of such warrants (or bonds), if their address be known, of the number of warrants (or bonds), and the date on which payment will be made, which date shall not be less than ten days after the date of publication or of service of notice, and on which date so fixed, interest shall cease.

(4) The board of county commissioners shall provide for making payments for maintenance or improvements in any rural improvement district by the following method:

The board of county commissioners shall sell bonds or warrants issued under the provisions hereof, in an amount sufficient to pay that part of the total cost and expense of making the improvement which is to be assessed against the property within the district, to the highest and best bidder therefor for cash, for not less than the face value of such bonds, or warrants, and including interest thereon, and shall use the proceeds of such sale in making payment to the contractor, or contractors, and such payment may be made either, from time to time, on estimates made by the engineer in charge of such improvements for the county, or upon the entire completion of the improvements and the acceptance thereof by the board of county commissioners. The provisions of sections 11-2313, 11-2314 and 11-2315, which relate to the notice of sale, publication of notice and manner and method of selling bonds by cities and towns, insofar as the same are applicable thereto and not in conflict with the provisions of this section, shall apply to, govern and control the form of notice of sale, publication of notice and manner and method of selling such bonds or warrants.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 20, Ch. 147, L. 1921; re-en. Sec. 4593, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1955; amd. Sec. 7, Ch. 260, L. 1959; amd. Sec. 2, Ch. 136, L. 1961; amd. Sec. 2, Ch. 40, L. 1965.

Amendments

The 1959 amendment in the second sentence of subd. (2) substituted the words "bear the signatures of" for the words "be signed by" and deleted a proviso from the end of the third sentence of that subdivision which read "provided, however, that said coupons may bear the facsimile signatures of said officers in the discretion of the board of county commissioners."

The 1961 amendment substituted "signatures" for "engraved facsimile signature" near the end of the second paragraph in the body of the form set out in subd. (1); deleted from the end of subd. (3) a sentence which read, "When it is provided by the resolution creating or maintaining the district that the work be paid in warrants (or bonds) the board of county commissioners shall by resolution fix the denominations of such warrants (or bonds) which may be one hundred dollars (\$100.00), or fractions or multiples thereof, the rate of interest, which shall not exceed six per cent (6%) per annum, and provide for the payment or redemption of such warrants (or bonds) at a time certain, which time of payment must not exceed twenty (20) years

from and after the date of issuance"; and added subd. (4).

The 1965 amendment restored to the third sentence of subd. (2) the proviso deleted by the 1959 amendment; increased the period specified at the end of subd. (2) from twenty to thirty years; added at the end of subd. (2) the clause pertaining to federal loans; and made a minor change in phraseology in the form set forth in subd. (1).

16-1621. (4594) Repealed.

Repeal

This section (Sec. 21, Ch. 147, L. 1921), relating to contracts payable in warrants,

Repealing Clauses

Section 1 of Ch. 136, Laws 1961 read "That section 16-1621, Revised Codes of Montana, 1947, be, and the same is hereby repealed."

Section 3 of Ch. 136, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

Investment of interest and sinking fund moneys, sec. 11-2288.

was repealed by Sec. 1, Ch. 136, Laws 1961.

16-1626. (4599) Definition of terms. 1. * * * [Same as parent volume.]

2. The words "work," "improved" and "improvements," as used in this act, shall include all work or the securing of property, by purchase or otherwise, mentioned in this act, and also the construction, reconstruction, maintenance and repairs, of all or any portion of said work.

3 to 13. * * * [Same as parent volume.]

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 26, Ch. 147, L. 1921; re-en. Sec. 4599, R. C. M. 1921; amd. Sec. 4, Ch. 134, L. 1961.

Amendment

The 1961 amendment in subd. 2 substituted "improvements," for "improvement," and after the words "securing of property" inserted the words "by purchase or otherwise."

16-1629. (4601.1) Maintenance of lighting systems in rural improvement districts—contract for furnishing light—apportionment of costs—maintenance fund—lien of assessment. (1) When there has been, or shall be, created a rural improvement district, according to the provisions of sections 16-1601 through 16-1632, for the purpose of securing a lighting system for the territory embraced in such rural improvement district, and no expense of construction is incurred by such rural improvement district in the installation of such lighting system, and it is necessary only to secure funds for the maintenance and operation of said system, and lights for said territory can best be secured by entering a contract for such lighting with some other person or corporation, the board of county commissioners of such county may enter into a contract with other persons or corporation for the purpose of furnishing light to said rural improvement district.

(2) The cost of said service to said rural improvement district may be apportioned among the various tracts of land within said improvement district in proportion to the assessed value of said lands within said improvement district as determined by the said board of county commissioners, or at the option of said board, in proportion to the lineal front footage as determined by said board of each tract, any part of which is in the district, and abuts the street or roadway along which the lighting system is to be maintained, or in proportion to the area as determined by said board of that portion of each tract included in the district; and before

the first Monday of September of each year, the board of county commissioners shall pass, and finally adopt a resolution levying and assessing all the property within the district, an amount equal to the whole cost of maintaining said lighting system, and the same shall be proportioned against the several tracts of land in said district as provided herein. Said resolution levying assessments to defray the cost of maintenance shall be prepared and certified to in the manner as near as may be to a resolution levying assessments for making, constructing, and installing the improvements in said special improvement districts, and the money collected therefor, shall be paid into a fund known as Special Improvement District No. _____ Maintenance Fund, the number of which shall correspond with the number of the special improvement district in which the improvements so maintained are situated, and such funds shall be used to defray the expense of maintenance of said system, and for no other purpose. Any such assessment levied and made for any purpose in this section mentioned, together with all cost and penalties, shall constitute a lien upon and against the property upon which said assessments are made and levied from and after the date of the final passage and adoption of the resolution levying the same, which lien can be only extinguished by payment of such assessments, with all penalties, costs and interest.

History: En. Sec. 1, Ch. 58, L. 1933; amd. Sec. 1, Ch. 217, L. 1959.

Amendment

The 1959 amendment in subd. (2) inserted the words "within said improvement district" the second time they appear and added that portion of the subdivision beginning with the words "or at the option" down to and including the words "each tract included in the district."

Repealing Clause

Section 2 of Ch. 217, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 217, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 11, 1959.

16-1633. Rural special improvement district revolving fund. The board of county commissioners of any county in the state which may hereafter create any rural special improvement district or districts for any purpose shall, in order to secure prompt payment of any special improvement district bonds or warrants issued in payment of improvements made therein, and the interest thereon as it becomes due, create, establish, and maintain by resolution a fund to be known and designated as "Rural Special Improvement District Revolving Fund."

History: En. Sec. 1, Ch. 188, L. 1957.

Title of Act

An act relating to rural special improvement districts in counties; authorizing the creation, maintenance and use of a rural special improvement district revolving fund in any county for the purpose of se-

curing prompt payment of rural special improvement district bonds and warrants and interest thereon, and requiring levy of taxes when necessary for the financial requirements of such fund; and repealing all acts and parts of acts in conflict herewith.

16-1634. Moneys for fund—tax levy. For the purpose of providing funds for such revolving fund the board of county commissioners

(1) may in its discretion, from time to time, transfer to the revolving fund from the general fund of the county such amount or amounts as may

be deemed necessary, which amount or amounts so transferred shall be deemed and considered, and shall be, loans from such general fund to the revolving fund; and

(2) shall, in addition to such transfer or transfers from the general fund, or in lieu thereof, levy and collect for such revolving fund such a tax, hereby declared to be for a public purpose, on all the taxable property in such county as shall be necessary to meet the financial requirements of such fund, such levy, together with such transfer, not to exceed in any one year five per centum (5%) of the principal amount of the then outstanding rural special improvement district bonds and warrants.

History: En. Sec. 2, Ch. 188, L. 1957.

16-1635. Use of revolving fund—loans. (1) Whenever any rural special improvement district bond or warrant, or any interest thereon, shall hereafter become due and payable, and there shall then be either no money or not sufficient money in the appropriate district fund with which to pay the same, an amount sufficient to make up the deficiency may, by order of the board of county commissioners, be loaned by the revolving fund to such district fund, and thereupon such bond or warrant or such interest thereon shall be paid from the money so loaned or from the money so loaned when added to such insufficient amount, as the case may require.

(2) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree to issue orders annually authorizing loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that funds are available, and may further undertake and agree to provide funds for such revolving fund pursuant to the provisions of section 2 [16-1634] of this act by annually making such tax levy (or, in lieu thereof, such loan from the general fund) as the board of county commissioners may so agree to and undertake, subject to the maximum limitations imposed by said section 2 [16-1634] of this act, which said undertakings and agreements shall be binding upon said county so long as any of said special improvement district bonds or warrants so offered, or any interest thereon, remain unpaid.

History: En. Sec. 3, Ch. 188, L. 1957.

16-1636. Loan—lien—repayment. Whenever any loan is made to any rural special improvement district fund from the revolving fund, the revolving fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments, and on all unpaid assessments and installments of assessments on such district, whether delinquent or not, and on all moneys thereafter coming into such district fund, to the amount of such loan, together with interest thereon from the time it was made at the rate, or percentage, borne by the bond or warrant for payment of which, or, of interest thereon, such loan was made; and whenever there shall be moneys in such district fund which are not required for payment of any bond or warrant of such district, or of interest thereon, so much of such moneys as may be necessary to pay such loan

shall, by order of the board of county commissioners, be transferred to the revolving fund; and after all the bonds and warrants issued on any rural special improvement district have been fully paid, all moneys remaining in such district fund shall by the order of the board be transferred to and become part of the revolving fund; if after all the bonds and warrants issued on any rural special improvement district have been fully paid and all moneys remaining in such district fund have been transferred to the revolving fund there still remains a debt from the district to the revolving fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the revolving fund.

History: En. Sec. 4, Ch. 188, L. 1957.

16-1637. Excess moneys in revolving fund—transfer to general fund. Whenever there is in the revolving fund an amount in excess of the amount which the board deems necessary for payment or redemption of maturing bonds or warrants or interest thereon, the board may order such excess or any part thereof transferred to the general fund of the county.

History: En. Sec. 5, Ch. 188, L. 1957.

Separability Clause

Section 6 of Ch. 188, Laws 1957 read: "If any clause, sentence, paragraph, section, or other part whatsoever, of this act shall for any reason be held to be invalid or inoperative, the remainder of this act shall not thereby be invalidated, impaired, or in anywise affected, and such holding

shall be confined in its effect to the clause, sentence, paragraph, section, or other part of this act, directly adjudged to be invalid or inoperative."

Repealing Clause

Section 7 of Ch. 188, Laws 1957 read "All acts and parts of acts in conflict with this act are hereby repealed to the extent of such conflict."

16-1638. Cancellation of record of extinguished liability accounts. The board of county commissioners in any county in the state of Montana is hereby authorized to cancel of record all or any special rural improvement district liability accounts incurred or issued prior to February 25, 1929, the liability of which has been extinguished by reason of issuance of tax deed, or by the application of the statute of limitations or other laws of the state of Montana.

History: En. Sec. 1, Ch. 3, L. 1959.

Title of Act

An act relating to cancellation of record of special improvement district warrants and liability accounts in rural improvement districts in counties in which warrants or liability accounts were incurred or issued prior to February 25, 1929, and the liability of which has been extin-

guished by reason of issuance of tax deeds, by application of statute of limitations, or other laws of the state of Montana; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 3, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 17—WEED CONTROL

- Section 16-1706. Wilfully permitting noxious weeds to go to seed unlawful.
 16-1708. Embargo against introduction of noxious weed seed from other states.
 16-1708.1. Rules and regulations for enforcement of interstate embargo.
 16-1708.2. Violations of interstate embargo—penalty.
 16-1708.3. Disposition of fines and inspection fees.
 16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation.
 16-1723. Dissolution of weed control and weed seed extermination district.

16-1706. Wilfully permitting noxious weeds to go to seed unlawful. It shall be unlawful to wilfully permit any noxious weed, as named in this act, or designated by the board of county commissioners of the respective county, to go to seed on any lands within the areas of any district. This section shall apply to all persons, co-partnerships, corporation, or companies owning, occupying or controlling lands, easements, or right of ways, as well as all county, state and federal owned and controlled highways, state lands; also all drainage and irrigation ditches, spoil banks, borrow pits and right of ways for canals and laterals within the district.

History: En. Sec. 2, Ch. 195, L. 1939; amd. Sec. 1, Ch. 11, L. 1961.

word "also" in the final clause of the section.

Amendment

The 1961 amendment inserted the word "wilfully" in the opening clause of the section; inserted the words "state lands"; and deleted the word "and" before the

Repealing Clause

Section 2 of Ch. 11, Laws 1961 repealed all acts and parts of acts in conflict therewith.

16-1708. Embargo against introduction of noxious weed seed from other states. Whenever the commissioner of agriculture of the state has good reason to believe that movements of grain, plants, seed, tubers, nursery stock, hay, straw, fruit, or other materials containing noxious weed seed or plants dangerous or inimical to the horticultural or agricultural industries are about to be introduced into the state, he may so advise the governor, and the governor shall, by proclamation, declare an embargo against the importation or shipment of any such grain, plants, tubers, nursery stock, seed, hay, straw, fruit, or other materials into the state, except under such restrictions as are established in this act, and as provided in the rules and regulations established by the commissioner of agriculture.

History: En. Sec. 4, Ch. 195, L. 1939; amd. Sec. 1, Ch. 44, L. 1965.

Amendment

The 1965 amendment substituted "commissioner of agriculture" for "governor" near the beginning of the section; substituted "movements" for "shipments"; inserted "hay, straw" in two places; inserted "or other materials" after "fruit" in

two places; substituted "he may so advise the governor, and the governor shall" for "he shall"; and substituted "as are established in this act, and as provided in the rules and regulations established by the commissioner of agriculture" at the end of the section for "as he, after consulting the commissioner of agriculture, may deem proper."

16-1708.1. Rules and regulations for enforcement of interstate embargo. The commissioner of agriculture is hereby vested with the power and authority, and it is hereby made his duty, to adopt all necessary restrictions, rules, and regulations in the enforcement of any embargo proclaimed as provided in section 1 [16-1708] of this act. The commissioner, in adopting such restrictions, rules and regulations, may provide for the establishment of inspection stations, the appointment of inspectors, the establishment of the inspection fees, the issuance of certificates, the methods of transporting and packaging, and such other rules, regulations and procedures as may be necessary to carry out the intent of this act.

History: En. Sec. 2, Ch. 44, L. 1965.

Title of Act

An act providing for an embargo against the importation of grain, hay, straw,

plants, seeds, tubers, nursery stock, fruit, or other materials containing noxious weed seeds into the state; and amending section 16-1708, R. C. M. 1947.

16-1708.2. Violations of interstate embargo—penalty. Any person who refuses to obey an order of an appointed inspector or willfully disobeys the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50) and not more than five hundred dollars (\$500).

History: En. Sec. 3, Ch. 44, L. 1965.

16-1708.3. Disposition of fines and inspection fees. All fines levied as provided in section 3 [16-1708.2] of this act, and all fees collected from inspections shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the commissioner of agriculture for the purpose of administering and enforcing this act.

History: En. Sec. 4, Ch. 44, L. 1965.

16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation. The commissioners shall appoint for each county in which a city, town, or county weed control and weed seed extermination district is created, a board of weed control and weed seed extermination supervisors, upon the creation of the first district, consisting of three members, who are owners of agricultural land within a district. They shall be appointed for a period of one, two, three (1, 2, 3) years, respectively, dating from the preceding July, and thereafter an appointment or reappointment shall be made annually for a period of three (3) years, with said appointment being made at the July meeting of the board of county commissioners. Said supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board. All such supervisors shall be entitled to mileage and per diem of ten dollars (\$10) per day. The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within their county the control program.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965.

The 1965 amendment substituted "of ten dollars (\$10) per day" for "at the prevailing rates for other county employees" at the end of the fifth sentence; and made two minor changes.

Amendments

The 1961 amendment substituted the fifth sentence, relating to mileage and per diem of supervisors, for a sentence which read "All such supervisors shall serve without pay, except expenses for mileage, at five cents (5¢) a mile and five dollars (\$5.00) per diem."

Repealing Clause

Section 2 of Ch. 51, Laws 1961 repealed all acts and parts of acts in conflict therewith.

16-1723. Dissolution of weed control and weed seed extermination district. When a petition signed by fifty-one per cent (51 %) of the land-owners of agricultural land residing within any weed control and weed

seed extermination district shall be presented to the board of county commissioners of the county wherein such district is situated, requesting the dissolution of such district, the commissioners shall set a day for a hearing upon such petition and shall cause notice of the time and place thereof to be given by posting notices in not less than three (3) public places in said district and by publication in two (2) weekly issues of the newspaper published nearest the district. All persons owning lands within said district and all other persons having any interests which would be affected by the dissolution of such district shall be entitled to be heard at such hearing, and upon such hearing the board of county commissioners shall determine whether or not weed infestation within said district requires a continuance thereof, and, if said board shall find and determine that the continuance of said district is not necessary it shall dissolve said district by a resolution made and entered upon its minutes, which resolution may, in the discretion of said board, become effective at a future date to be therein specified, but not more than ninety (90) days after the adoption of such resolution.

At the time of such dissolution of a district, the county commissioners shall dispose of any unexpended balance of moneys levied and collected under the provisions of section 16-1717 by transferring such moneys to the county general fund, and the levy provided in said section shall cease to be effective. All materials and equipment purchased by the county commissioners under the provisions of section 16-1718 shall be disposed of by sale as provided for in section 16-1009, Revised Codes of Montana of 1947, or laws amendatory thereto, and all moneys received from such sale shall be deposited with the county treasurer to the credit of the county general fund.

History: En. Sec. 1, Ch. 206, L. 1953; amd. Sec. 1, Ch. 47, L. 1965.

Amendment

The 1965 amendment substituted "fifty-one per cent (51%) of the landowners of agricultural land" near the beginning of the section for "thirty-five per cent (35%)

of the landowners"; and deleted from the end of the first paragraph a proviso reading, "provided, however, that no district shall be so dissolved if written objection to such dissolution signed by the owners of fifty-one per cent (51%) of the agricultural land within said district is filed with the commissioners."

CHAPTER 18—CLAIMS AGAINST COUNTIES, COUNTY WARRANTS

Section 16-1802. Claims to be itemized—time for presenting.

16-1803. Request for bids necessary in making contracts for purchases and for construction of buildings exceeding two thousand dollars.

16-1801. (4604) County officer not to present certain claims, etc.

References

Cited or applied in *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270,

272; *State ex rel. Montana Hospital Assn. v. Pitch*, 140 M 349, 372 P 2d 90, 91.

16-1802. (4605) Claims to be itemized—time for presenting. No account must be allowed by the board unless the same is made out in separate items, the nature of each item stated; if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Claims against the county shall

contain the following statement: "I certify that this claim is correct and just in all respects, and that payment or credit has not been received." Claims need not be verified by affidavit. Every claim against the county must be presented within a year after the last item accrued.

History: Ap. p. Sec. 23, p. 503, *Bannack Stat.*; re-en. Sec. 23, p. 437, *Cod. Stat.* 1871; amd. Sec. 1, p. 63, L. 1874; re-en. Sec. 357, 5th Div. Rev. Stat. 1879; re-en. Sec. 762, 5th Div. Comp. Stat. 1887; amd. Sec. 4286, Pol. C. 1895; re-en. Sec. 2945, Rev. C. 1907; re-en. Sec. 4605, R. C. M. 1921; amd. Sec. 1, Ch. 56, L. 1957. Cal. Pol. C. Sec. 4072.

Amendment

The 1957 amendment deleted the words "and is verified by affidavit showing that

the account is just and wholly unpaid; and" which appeared between the words "stated" and "if" and added the second sentence.

Operation and Effect

Where, without first ascertaining the legal ownership thereof, a county appropriated a landowner's gravel, the landowner's action was not barred by the limitation of this section. *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270.

16-1803. Request for bids necessary in making contracts for purchases and for construction of buildings exceeding two thousand dollars. (1) No contract shall be entered into between a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind, or for the construction of any building, for which must be paid a sum in excess of two thousand dollars (\$2,000.00) without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section shall not apply to contracts for public printing entered into in accordance with the provisions of Chapter 12 of Title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the board, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963.

Amendment

The 1963 amendment inserted "or for

the construction of any building" in the first part of subd. (1).

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

16-1808. (4610) Appeals.

Mandate as Remedy

District court properly quashed writ of mandate to compel county commissioners to allow claim of hospital for medical care of a floating sheepherder since there existed a plain, speedy and adequate

remedy at law by an appeal to the district court from disallowance of claim by county commissioners. *State ex rel. Montana Hospital Assn., Inc. v. Pitch*, 140 M 349, 372 P 2d 90, 91.

CHAPTER 19—COUNTY BUDGET SYSTEM

Section 16-1904. Hearings on budget—adoption—fixing tax levies.

16-1907. Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations.

16-1904. (4613.4) Hearings on budget—adoption—fixing tax levies.

(1). * * * [Same as parent volume.]

(2) Upon the conclusion of such hearing the board shall first determine and fix the amount which it is estimated will accrue to each fund during the fiscal year from all sources, except the taxation of property, but in so doing the board shall not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during any preceding fiscal year, or years. The board shall then determine and fix separately the amount appropriated for and authorized to be expended for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for the expenditures so authorized; provided that there shall not be added to the amount to be appropriated and authorized to be expended for any item, or to the total amount appropriated and authorized to be expended from any fund any amount or percentage whatever because of any anticipated loss of revenue by reason of the nonpayment of taxes levied for such fiscal year; and provided further that the amount appropriated and authorized to be expended for any item contained in such budget, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest thereof, must not exceed by more than five per centum (5%) the amount appropriated and authorized for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, shall not exceed by more than five per centum (5%) the total amount appropriated and authorized for all purposes, except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants, from such fund under the appropriation made from such fund in the budget approved and adopted for the fiscal year immediately preceding; provided further that the foregoing limitations shall not apply to appropriations and expenditures authorized to be made from the county poor fund for payment of bonds and emergency warrants and interest thereon; and provided further that the total expenditures authorized to be made from any fund, including reserve added thereto as hereinafter provided, shall not, in any event, exceed the aggregate of the cash balance in such fund at the close of the fiscal year immediately preceding, the amount of estimated revenues to accrue to such fund, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the fiscal year.

(3) to (6). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 148, L. 1929; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963.

second proviso to the second sentence of subsection (2) for "total amount actually expended."

Amendment

The 1963 amendment inserted the words "for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued" in the first part of the second sentence of subsection (2); reduced the percentage set forth in two places in the second proviso to the second sentence of subsection (2) from 10% to 5%; and substituted "total amount appropriated and authorized" the second place that phrase appears in the

Saving Clause

Section 2 of Ch. 220, Laws 1963 read "Nothing contained in this act is intended to or should be construed as changing, amending or repealing any portion of subsections (1), (3), (4), (5) and (6) of section 16-1904."

Repealing Clause

Section 3 of Ch. 220, Laws 1963 repealed all acts and parts of acts in conflict therewith.

16-1907. (4613.6) Emergency expenditures—notice and hearings—objections by taxpayers—appeal—notice and hearing dispensed with in extreme cases—emergency warrants—tax levy—lapse of appropriations. (1) to (4). * * * [Same as parent volume.]

(5) Upon the happening of an emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection, or for the immediate preservation of order or of public health, or for the restoration of a condition of usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county, or to meet mandatory expenditures required by law, the county commissioners may, upon adoption by unanimous vote of all members present at any meeting, the time and place of which all members shall have had reasonable notice, of a resolution stating the facts constituting the emergency, and entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing; provided, that the aggregate total of all expenditures made or liabilities incurred in any fiscal year to meet emergencies other than such as are caused by fire, flood, explosion, earthquake, epidemic, riot or insurrection, shall not exceed the sum of two hundred thousand dollars (\$200,000.00) in counties of classifications 1, 2, 3 and 4, provided, however, that after July 1, 1963, such emergency expenditures shall not exceed twenty-five thousand dollars (\$25,000.00); fifteen thousand dollars (\$15,000.00) in counties of classifications 5 and 6, and seven thousand five hundred dollars (\$7,500.00) in counties of classification 7 unless the excess above said sum shall first have been authorized by a majority of the taxpaying freeholders of such county, who are registered electors therein, voting at a general or special election. The question of authorizing such excess expenditure shall be submitted in the following form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

Shall the board of county commissioners of _____ County, Montana be authorized to make additional expenditures and incur addi-

tional liabilities in the amount of \$_____ over and above the sum of _____, to meet an emergency caused by _____.

☐ Yes

☐ No

Notice of such election shall be given by posting notice thereof at least fifteen (15) days before such election in three (3) public places in each voting precinct within the county and by publishing such notice for not less than ten (10) days before the date of such election.

(6) to (8). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 148, L. 1929; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963.

Effective Date

Section 2 of Ch. 194, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

Amendment

The 1963 amendment increased the maximum annual expenditure by counties of classifications 1 to 4 as specified in subsection (5) from \$25,000 to \$200,000; and inserted the proviso for reversion to the \$25,000 maximum after July 1, 1963.

Cross-Reference

Temporary authority for emergency tax levy by county commissioners, sec. 84-3805 note.

CHAPTER 20—COUNTY FINANCE—BONDS AND WARRANTS

- Section 16-2001. Investments of sinking funds of counties, cities and towns—protection and keeping of bonds, securities, and any time or savings deposits.
- 16-2008. Board of county commissioners may issue bonds for certain purposes.
- 16-2010. Limitation on amount of bonds—issuance in excess of limitations void.
- 16-2012. Form of bonds.
- 16-2026. Who are entitled to vote.
- 16-2028. Canvass of election returns—resolution for bond issue.
- 16-2033. Form and execution of bonds.
- 16-2044. Investment of sinking and interest fund.
- 16-2050. Investment of county moneys in county warrants and investment of school district or county high school moneys.

16-2001. (4622.1) Investments of sinking funds of counties, cities and towns—protection and keeping of bonds, securities, and any time or savings deposits. That the board of county commissioners of any county of the state of Montana, and the council or commission of any city or town of the state of Montana, shall have the power and authority and shall invest so much of the bond sinking funds of any such county, city or town, as is not needed for the payment of bonds or interest coupons, in United States government bonds or securities, state bonds or securities, any time or savings deposits, county, city or school district bonds or county or city warrants or other bonds or securities which are supported by general taxation, except irrigation district bonds, and special improvement district or maintenance district bonds or warrants; provided, however, that all such investments must first be approved by the state examiner, and that all such bonds, securities, or any time or savings deposits must be due and payable at least sixty (60) days before the obligations, for the payment of which the sinking fund was established, shall become due and payable; and provided further, that whenever any of the bonds,

for which such sinking fund was established, are not yet due but are then redeemable under optional provisions thereof, such sinking funds shall not be subject to investment but shall be used and applied in payment and redemption of such bonds. The bonds, securities, and any time or savings deposits in which any such sinking funds are invested shall be kept in the custody of the county, city or town treasurer and held by him for the benefit of the county, city or town, as the case may be. It shall be the duty of such treasurer to properly protect such bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which shall be a proper charge against the particular county, city or town. All moneys derived from interest on sinking fund investments as herein authorized, shall be credited by the treasurer of such county, city or town, to the sinking fund for which the investment was made.

History: En. Sec. 1, Ch. 86, L. 1923; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963.

Amendment

The 1963 amendment inserted "any time or savings deposits" in two places in the first sentence and in one place each in the second and third sentences.

16-2003. (4626) Lost bond or warrant.

Compiler's Note

The word "bond" at the beginning of this section in the parent volume should be "board."

16-2008. (4630.1) Board of county commissioners may issue bonds for certain purposes. The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate and sell coupon bonds on the credit of the county, as hereinafter in this act more specifically provided, for any of the following purposes:

(a). For the purpose of acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control and maintain; for the purpose of acquiring land for any other public use or activity within the county, under its control and authorized by law.

(b). For the purpose of constructing, erecting or acquiring by purchase necessary public buildings within the county, under its control and authorized by law, making additions to and repairing buildings and for the purpose of furnishing and equipping the same, and for the purpose of building, purchasing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water.

(c) to (i). * * * [Same as parent volume, but see Compiler's Note below.]

History: En. Sec. 1, Ch. 188, L. 1931; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965.

(c), effective December 31, 1966, and appropriately redesignated the succeeding paragraphs.

Amendments

Compiler's Note

The 1965 amendment deleted paragraph

The 1963 amendment added the words "and for the purpose of building, purchas-

ing, constructing and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water" at the end of subd. (b).

For effect of 1965 amendment, see Compiler's Note above.

Effective Date

Section 2 of Ch. 136, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

Temporary Authority for Funding Bonds

Chapter 210, Laws 1963, authorized county commissioners, during the period from July 1 to December 31, 1963, to issue bonds under certain conditions for the purpose of funding warrants outstanding on June 30, 1963. The act read: "An act authorizing boards of county commissioners to issue funding bonds after July 1, 1963, to fund outstanding county warrants as of June 30, 1963; providing the term of funding bonds; providing for a public hearing; and providing an effective date.

"Section 1. The board of county commissioners of any county having, at the close of business on June 30, 1963, an indebtedness in excess of two hundred thousand dollars (\$200,000) consisting of outstanding warrants issued against any authorized county fund or funds and, being without sufficient money in any such fund or funds with which to pay the same, may, on and after July 1, 1963, issue and sell negotiable funding bonds to the extent that such outstanding warrants shall exceed the total cash on hand in such funds of the county as of the close of business on June 30, 1963, for the purpose of funding, paying, and retiring such outstanding warrants.

"Section 2. Such funding bonds may be issued and sold without the board of county commissioners being required to submit the question of issuing such bonds at an election; and provided, further, that such bonds, when issued, may with all other outstanding indebtedness of the county exceed, in the aggregate, the limit of indebtedness fixed by section 16-2010, R. C. M. 1947, but the total of all outstanding indebtedness of the county in-

cluding funding bonds shall not exceed in the aggregate the five per cent (5%) limit of indebtedness permitted such county under section 5 of article XIII of the Montana constitution.

"Section 3. Such bonds shall be issued for a term not to exceed ten (10) years and shall be sold on the basis of competitive bids in accordance with the laws of the state of Montana governing the issuance, sale and exchange of county bonds and the levying of taxes for the payment of principal and interest and the redemption thereof.

"Section 4. Before adopting a resolution providing for the issue and sale of such bonds, the board of county commissioners shall publish a proclamation declaring its intention to so adopt a resolution for the issue and sale of funding bonds. The proclamation shall set forth the total amount of county warrants and indebtedness outstanding, the total amount of such proposed bond issue, the proposed methods of payment and redemption, and such further information as the board shall consider necessary. The proclamation shall provide for a public hearing to be conducted at least ten (10) days subsequent to the publication. Any taxpaying elector of the county may attend such hearing and present written or oral protest to the passage of the resolution and the board shall fully consider all protests so submitted. If, after considering all protests, the board determines that the best interests of the county require the issuance of such funding bonds, its decisions shall be final and it may adopt the necessary resolution for the issue and sale of such funding bonds.

"Section 5. The purpose of this act is to allow any county having an indebtedness in excess of two hundred thousand dollars (\$200,000) consisting of outstanding warrants and being without sufficient money to pay the same out of current tax receipts, to achieve a sound and current financial basis and to attain a position of compliance with county budget laws.

"Section 6. This act shall be in full force and effect from and after its passage and approval and shall be effective from the date of its approval until December 31, 1963."

16-2009. (4630.2) Repealed.

Repeal

This section (Sec. 2, Ch. 188, L. 1931; Secs. 1, 2, Ch. 240, L. 1947), defining single and separate purposes with relation to the acquisition of land and acquisition and

construction of buildings, roads and other public works, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

16-2010. (4630.3) Limitation on amount of bonds—issuance in excess of limitations void. No county shall issue bonds for any purpose which,

with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per centum ($2\frac{1}{2}\%$) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the issuance of such bonds; provided, however, that a county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per centum ($2\frac{1}{2}\%$), but will not exceed five per centum (5%) of the value of such taxable property, when necessary to do so for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes; provided, however, that this act shall not be construed to extend limitations on bonded indebtedness for county high school purposes, as fixed by section 75-4114, and acts amendatory thereof; and further provided, that the foregoing limitations shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932. All bonds issued by any county in excess of the limitations herein fixed shall be null and void. The words "value of the taxable property," as used in this section, are used in the same sense as in section 5 of article 13, of the constitution, and shall be given the same meaning and construction. [Effective December 31, 1966.]

History: En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965.

Compiler's Note

Section 75-4114, referred to in this section, was repealed by Ch. 83, Laws of 1951.

Amendment

The 1965 amendment deleted "when necessary to do so for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident, or" after "five per centum (5%) of the value of such taxable property" in the first proviso.

16-2012. (4630.5) Form of bonds. All bonds hereafter issued by any county shall be either amortization bonds or serial bonds, and all things being equal amortization bonds shall be issued in preference to serial bonds, otherwise serial bonds may be issued.

The term "amortization bonds," as used in this act, is hereby defined as meaning that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

The term "serial bonds," as used in this act, is hereby defined as being a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds, becoming due and payable each year, the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be

paid each year the bonds are to run will be the same; provided, however, that the installments becoming due and payable the first year, or the first and second years, may vary in amount from the others to the extent resulting from fixing the amounts of each bond of the other installments at one hundred dollars (\$100.00), five hundred dollars (\$500.00) or one thousand dollars (\$1,000.00) as may be determined by the board of county commissioners.

History: En. Sec. 5, Ch. 188, L. 1931; amd. Sec. 1, Ch. 112, L. 1961.

of the other payments at one hundred dollars (\$100.00) or some multiple thereof."

Amendment

The 1961 amendment substituted a new proviso at the end of the section for one which read "provided, however, that the final payment may vary in amount from the other payments to the extent resulting from fixing the amount of each bond

Effective Date

Section 2 of Ch. 112, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved March 2, 1961.

16-2026. (4630.12) Who are entitled to vote. In all county bond elections hereafter held only qualified registered electors residing within the county, who are taxpayers upon property therein and whose names appear upon the last completed assessment role for state, county and school district taxes, shall have the right to vote. Upon the adoption of the resolution calling for the election, the county clerk must cause to be published in the official newspaper of the county a notice, signed by him, stating that registration for such bond election will close at noon on the fifteenth day prior to the date for holding such election and at that time the registration books shall be closed for such election. Such notice must be published at least ten (10) days prior to the day when such registration books will be closed.

After the closing of the registration books for such election the county clerk shall promptly prepare lists of the registered electors of such voting precinct, who are taxpayers upon property within the county and whose names appear on the last completed assessment roll for state, county and school district taxes, and who are entitled to vote at such election, and shall prepare precinct registers for such election, as provided in section 23-515, and deliver the same to the judges of election prior to the opening of the polls. It shall not be necessary to publish or post such list of qualified electors.

History: En. Sec. 12, Ch. 188, L. 1931; amd. Sec. 1, Ch. 138, L. 1939; amd. Sec. 18, Ch. 64, L. 1959.

Amendment

The 1959 amendment, in the second paragraph, substituted the words "precinct registers" for the words "poll books."

16-2028. (4630.14) Canvass of election returns—resolution for bond issue. If the bonding election be held at the same time as a general election, then the returns shall be canvassed at the same time as the returns from such general election; but if the bonding election is a special election, then the board of county commissioners shall meet within ten (10) days after the date of holding such special election and canvass the returns. If it is found that at such election forty per centum (40%) or more, of the qualified electors entitled to vote at such election voted on such question,

and that a majority of such votes were cast in favor of the issuing of such bonds, the board of county commissioners shall, at a regular or special meeting held within thirty (30) days thereafter, pass and adopt a resolution providing for the issuance of such bonds. Such resolution shall recite the purpose for which such bonds are to be issued, the amount thereof, the maximum rate of interest the bonds may bear, the date they shall bear, the period of time through which they shall be payable, the optional provisions, if any; and provide for the manner of the execution of the same. It shall provide that preference shall be given amortization bonds but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form, and shall adopt a form of notice of the sale of the bonds.

The board may, in its discretion, provide that such bonds may be issued and sold in two or more series or installments.

Provided, however, that if none of said bonds have been sold and issued within three years from the date of the bonding election, and no vested rights have accrued thereunder, the board of county commissioners may rescind the authority to sell and issue such bonds by the passage and adoption of a resolution wherein is recited the reason for such rescission of authority.

History: En. Sec. 14, Ch. 188, L. 1931; Amendment
amd. Sec. 1, Ch. 210, L. 1961.

The 1961 amendment added the proviso at the end of the section.

16-2033. (4630.19) Form and execution of bonds. At the time of the sale of the bonds or at a meeting held thereafter the board of county commissioners shall prescribe the form of the bonds, whether amortization bonds or serial bonds, and of the coupons to be attached thereto. Each and every county bond and every coupon attached thereto must be signed by the chairman of the board of county commissioners and the county treasurer and attested by the county clerk, and each bond shall have the county seal affixed thereto.

History: En. Sec. 19, Ch. 188, L. 1931; Amendment
amd. Sec. 8, Ch. 260, L. 1959.

The 1959 amendment deleted a proviso from the end of this section which authorized facsimile signatures on coupons.

16-2044. (4630.30) Investment of sinking and interest fund. Whenever there is available money in any sinking and interest fund, over and above the amount required for payment of principal and interest becoming due on the next interest payment date, sufficient to pay and redeem one or more outstanding bonds of the issue or series to which such sinking and interest fund belongs, and such bonds are not held by the state of Montana and are not yet redeemable or due, the county treasurer, at the direction of the board of county commissioners, shall purchase such bond or bonds of such issue or series, if this can be done at not more than par and accrued interest, or at such reasonable premium as the board may feel justified in paying, not in any case exceeding five per centum (5%).

When any bonds have been heretofore or are hereafter purchased with any sinking and interest fund moneys under the provisions of this section

such bonds, with attached interest coupons, if not then in the possession of the county treasurer, shall be immediately delivered to him, and such county treasurer shall at once endorse across the face of each such bond the word "Paid" and the date thereof and shall sign such endorsement, and such treasurer shall, without detaching the same, cancel each interest coupon attached to such bonds by endorsing across the face thereof the word "Cancelled" and the date thereof and shall sign such endorsement. After making such endorsements on such bonds and coupons the county treasurer shall enter on the record of registration thereof the date such bonds and coupons were so endorsed by him as being paid and cancelled, with the numbers and amounts thereof and the dates when the same would have become due and payable if they had not been so purchased. The county treasurer shall then deliver such bonds, with the cancelled coupons attached, to the county clerk with a report showing the numbers thereof and amount paid on the purchase thereof, and the county clerk shall exhibit such bonds, with attached coupons and report, to the board of county commissioners at their next regular session.

If the board cannot purchase any of the outstanding bonds at such reasonable price then such available money in such sinking and interest fund shall be invested by the county treasurer, under the direction of the board of county commissioners, in other bonds of the county, in warrants of the county or any other county of the state, in bonds or warrants of the state, in bonds or treasury certificates of the United States, or in any time or savings deposits; provided, however, that such sinking and interest funds shall only be invested in such securities as will become due and payable at least sixty (60) days before the date when the bonds of the county of such series or issue will become redeemable.

History: En. Sec. 30, Ch. 188, L. 1931;
amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1,
Ch. 12, L. 1963.

Amendment

The 1963 amendment inserted "or in any time or savings deposits" immediately before the proviso in the third paragraph.

16-2050. (4639.1) Investment of county moneys in county warrants and investment of school district or county high school moneys. (1) Except as provided in subsection (2) of this section, whenever the county has under its control any moneys, for which there is no immediate demand, in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter

when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made.

(2) Whenever the county has under its control any moneys realized from the sale of bonds by a school district or county high school for the purpose of construction, for which there is no immediate demand, which in the judgment of the governing body of the school district or county high school it would be advantageous to invest in any time or savings deposits or in short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments shall be credited to the sinking fund of the said school district or county high school, notwithstanding the provisions of subsection (6) of section 16-2618, Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 144, L. 1927; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963.

provided in subsection (2) of this section"; and added subd. (2).

The 1963 amendment inserted "any time or savings deposits" in the last sentence of subsection (1) and in the first sentence of subsection (2); inserted "the sinking fund of" after "credited to" in the second sentence of subsection (2); and deleted the words "building fund" which followed "county high school" in the second sentence of subsection (2).

Compiler's Note

Section 2 of Ch. 223, Laws 1961, amended sec. 75-3922.

Amendments

The 1961 amendment at the beginning of the section, inserted "(1) Except as

CHAPTER 22—TAX LEVY FOR ROAD AND BRIDGE CONSTRUCTION

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

16-2201 to 16-2204. (4713 to 4716) Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 160, L. 1919), relating to an increased tax levy

for road and bridge purposes, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 24—COUNTY OFFICERS—QUALIFICATIONS —GENERAL PROVISIONS

Section 16-2414. What offices to be kept open at county seat.

16-2428. County recording, filing, etc. — photostatic or other mechanical process authorized.

16-2429. Substitution of reproduction as public record.

- 16-2430. Admissibility into evidence—preparation of enlarged copy.
 16-2431. Reproduction of record or document in duplicate—storage of copy—display of copy.

16-2403. (4725) County officers enumerated.

Cross-Reference

Group insurance for county officers and employees, authority, contribution, sec. 11-1024.

16-2406. (4728) County and other officers, when elected, etc.

Appointment to Fill Vacancy

Held: that county commissioners who appointed a person in November to the office of county attorney to take office in January was not acting to forestall the

rights and prerogatives of the board which would be in office in January since only one of the members would be new in January. State ex rel. Koch v. Lexcen, 131 M 161, 308 P 2d 974.

16-2409. (4731) County and township officers may generally appoint, etc.

References

Cited or applied in State v. Cockrell,

131 M 254, 309 P 2d 316, 319; State v. Moran, 142 M 423, 384 P 2d 777.

16-2414. (4736) What offices to be kept open at county seat. The sheriff, the county clerk, the clerk of the district court, the treasurer, and county attorney, the county auditor in counties where such officer is maintained and the county assessor must keep their offices open for the transaction of business from 8:00 o'clock A. M. until 5 o'clock P. M. continuously every day in the year except holidays and Saturdays, provided however, that the said offices enumerated herein shall be kept open on Saturdays and on holidays and at other times when the business of said offices requires them to be kept open.

The county superintendent of schools shall keep his office open from 8:00 o'clock A. M. until 5 o'clock P. M. every day when he is not engaged in the supervision of schools except on holidays and on Saturdays, provided that when the county superintendent has a deputy or clerk the office shall be kept open from 8:00 o'clock A. M. until 5 o'clock P. M. every day except holidays and except Saturdays. Said office shall be kept open at all times as business may require.

This act shall not apply to counties operating under the county manager plan.

History: En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R. C. M. 1921; amd. Sec. 1, Ch. 103, L. 1949; amd. Sec. 1, Ch. 199, L. 1957. Cal. Pol. C. Sec. 4116.

Repealing Clause

Section 2 of Ch. 199, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 199, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 9, 1957.

Amendment

The 1957 amendment changed the office hours from 9:00 A. M. to 8:00 A. M. and authorized Saturday closing. Formerly the office hours were 9:00 A. M. to 5:00 P. M. while the office could be closed Saturday afternoons only. For section prior to amendment see parent volume.

16-2428. County recording, filing, etc.—photostatic or other mechanical process authorized. Whenever any officer of any county is required or authorized by law to record, copy, file, recopy or replace any document,

plat, paper, written instrument, or book, on file or of record in his office, he may do so by photostatic, microphotographic, microfilm, or other mechanical process which produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, written instrument, or record, in accordance with standards not less than those now approved for permanent records by the National Bureau of Standards.

History: En. Sec. 1, Ch. 117, L. 1959.

Title of Act

An act to provide for the recordation of instruments by photostatic, microphotographic or microfilm; to provide for the disposal of original recorded instruments when reproductions are substituted

therefor; to provide for copies of destroyed or disposed of originals being admissible as evidence in courts and proceedings; to provide for identification, indexing and safekeeping of copies of instruments and to provide for a repealing clause.

16-2429. Substitution of reproduction as public record. Any such document, plat, paper, written instrument or book reproduced as provided in section 1 [16-2428] of this act, the original of which is not less than ten (10) years old, can be disposed of or destroyed only upon order of the district or probate court having jurisdiction, and the reproductions substituted therefor as public records.

History: En. Sec. 2, Ch. 117, L. 1959.

16-2430. Admissibility into evidence—preparation of enlarged copy. The photostatic, microphotographic or microfilmed copy of any such record destroyed or disposed of as herein authorized, or a certified copy thereof, shall be admissible as evidence in any court or proceeding, and shall have the same force and effect as though the original record had been produced and proved. It shall be the duty of the custodian of such records to prepare enlarged typed or photographic copies of the records whenever their production is required by law.

History: En. Sec. 3, Ch. 117, L. 1959.

16-2431. Reproduction of record or document in duplicate—storage of copy—display of copy. Whenever any record or document is copied or reproduced by microphotographic or microfilm, or other mechanical process as herein provided it shall be made in duplicate, and the custodian thereof shall place one copy, the contents thereof being first duly identified and indexed, in a fireproof vault or fireproof storage place, and he shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than its original size or for preparing, for persons entitled thereto, to copies of the record.

History: En. Sec. 4, Ch. 117, L. 1959.

Repealing Clause

Section 5 of Ch. 117, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 26—COUNTY TREASURER—DUTIES AS TO WARRANTS AND OTHER COUNTY FINANCES

Section 16-2618. Deposit of public funds by county, city and town treasurers.

16-2618. (4767) Deposit of public funds by county, city and town treasurers. (1) It shall be the duty of all county, city and town treasurers

to deposit all public moneys in their possession and under their control in any solvent bank or banks located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank such security as the board of county commissioners, in the case of a county, or the council in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank authorized herein above in a savings or time deposit; and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government, payable within not to exceed one hundred eighty (180) days from the time of such investment.

(2) Said board of county commissioners, city or town council may require security for only such portion of deposits as is not guaranteed or insured according to law. Such securities shall consist of bonds of some surety company authorized to do business in the state of Montana, or bonds guaranteed by such companies directly or indirectly, bonds and securities of the United States government and its dependents, bonds and warrants of the state of Montana or of any county, city, town or school district of Montana, Federal Land Bank bonds, bonds of other states and counties of other states, bonds of the Dominion of Canada, and Canadian Provinces, and other Canadian bonds guaranteed by the Canadian government or provinces thereof, and bonds issued in the United States of America, which are quoted on the New York market, which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

(3) When negotiable securities are furnished, such securities may be placed in trust and the trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the state of Montana, and the form of receipt and the trustee have been approved by the state examiner. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It shall be the duty of the board of county commissioners in the case of county funds, or the council in the case of funds of a city or town, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of such acceptance and approval upon the record of their proceedings, and such bonds and securities shall be reapproved at least quarter annually thereafter.

(4) When more than one bank is available in any county, for the deposit of county funds, or in any city or town for the deposit of city or town funds, such deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to the paid-in capital

and surplus of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such deposits shall be maintained.

(5) Whenever it shall come to the attention of the state examiner that the funds of any county, city or town are not properly distributed as provided in this act, the state examiner shall order the treasurer of such county, city or town to distribute said funds in accordance herewith, and if such treasurer shall refuse or neglect to comply with such order, it shall be the duty of the state examiner to institute proceedings against such treasurer at the cost of the county, city or town of which such treasurer is an officer, on the official bond of such treasurer. If no such bank exists in the county, city or town, or if any bank or banks existing therein fails or refuses to qualify under the terms of this act to receive such deposits, then and in such case, or in either of such cases, such moneys as have not been accepted by any bank or banks within said county, city or town, shall be deposited under the terms of this act, in the bank or banks most convenient to such county, city or town, willing to accept such deposits under the terms of this act, and qualified as above provided. Any bank or banks receiving such deposits, shall, through its president and cashier, make a statement quarter annually of account, under oath, showing all such moneys that have been deposited with such bank during the quarter, the amount of daily balance in dollars, and the amount of interest by such bank or banks credited or paid therefor, and showing that neither such bank nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits, with any such bank. All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, until the security for such deposits shall have been first approved by the board of county commissioners in the case of county funds, or by the council in the case of city or town funds, and delivered to the treasurer.

(6) Except as provided in subsection (8) of this section, all interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city or town to whose credit such funds are deposited. Where moneys shall have been deposited in accordance with the provisions of this act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

(7) Any bank pledging securities as provided in this act at any time it deems advisable or desirable may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city or town at its next official meeting. Such securities so substituted shall at the time of sub-

stitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the county, city or town and to the depository bank, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank.

(8) Whenever in the judgment of the trustees of any common school district, high school district, or county high school it would be advantageous to invest any money of such school or school district in savings or time deposits in a state or national bank insured by the F.D.I.C., or in direct obligations of the United States government, payable within one hundred eighty (180) days from the time of investment, such governing body may in its discretion direct the county treasurer to make such investments. All interest collected on such deposits or investments shall be credited to the fund from which the money was withdrawn, provided that nothing in this act shall be interpreted to conflict with section 16-2050 R. C. M. 1947.

History: Ap. p. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965. Cal. Pol. C. Sec. 4161.

Amendments

The 1957 amendment in subd. (1) deleted a former second sentence which read "The sums so deposited shall bear uniform interest at the rate of not more than two per centum (2%) per annum, payable quarter annually"; deleted in the present second sentence the words "on demand" which appeared between the words "deposits" and "together"; and after the words "together with interest" deleted the word "thereon" and added the words "on any time or savings deposits * * *" to end of subd. (1); in subd. (6) inserted the words "or investments" between the words "deposits" and "shall"; and deleted the words "and approval" which appeared after "passage" in the proviso to former subd. (7).

The 1961 amendment reinstated in the proviso to former subd. (7) the words "and approval" which had been deleted by the 1957 amendment; and added a new subd. (8) which, as amended, now appears as subd. (7).

The 1963 amendment inserted the words "savings or" before "time deposit" in the second sentence of subd. (1); deleted the words "as evidenced by certificates of de-

posit or deposits, which by agreement may not be withdrawn on less than thirty (30) days' notice by the said board of county commissioners, or city or town council" which followed "time deposit" in the second sentence of subd. (1); deleted from the second sentence of subd. (2) the words "personal bonds, as hereinafter provided, when accompanied by a sworn statement of the resources and liabilities of each of the sureties thereon, which shall be attached and made a part of the bond" which followed the clause pertaining to Canadian-guaranteed bonds; deleted former subd. (7), which read: "No personal bond shall be accepted except when such bond is for the purpose of renewing a personal bond now in effect, and from and after December 31, 1930, personal bonds shall not be considered as acceptable security; provided, further, that from and after the passage and approval of this act, no new or additional deposit accounts shall be opened by any treasurer under any personal bond"; redesignated former subd. (8) as subd. (7); inserted "like" between "substitute" and "securities" in the first sentence of subd. (7); substituted "Such securities" for "Such security" at the beginning of the third sentence of subd. (7); and substituted "be at least equal in principal amount to the securities for which substitution is made" for "have a market value sufficient together with the market value of the original securities for which no substitution is made to equal or exceed one hundred ten dollars (\$110.00) for every one hundred dollars (\$100.00) of public deposits" at the end of the third sentence of subd. (7).

The 1965 amendment added subsection (8); inserted "Except as provided in subsection (8) of this section" at the beginning of subsection (6); and made a minor change in punctuation in subsection (1).

Repealing Clause

Section 2 of Ch. 50, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 27—SHERIFF

Section 16-2723. Mileage and expense of sheriff.

16-2702. (4774) Duties of sheriff.

References

Husky Hi Power, Inc. v. Schmidt,
140 M 353, 372 P 2d 142, 144.

16-2707. (4779) Return prima facie evidence.

Evidence to Contradict Return

A sheriff's return stating that he offered land for sale in separate parcels, as required by the statute, is prima-facie evidence of the facts stated therein and may be overcome only by clear, unequivocal, and convincing evidence. An affidavit later executed by the sheriff and

stating that he did not offer the land in separate parcels, but containing no excuse, explanation, or suggestion of mistake in the return, may be found not to be such clear, unequivocal, and convincing evidence. *Husky Hi Power, Inc. v. Schmidt*, 140 M 353, 372 P 2d 142, 144.

16-2708. (4780) Penalty for nonreturn of process.

References

Husky Hi Power, Inc. v. Schmidt,
140 M 353, 372 P 2d 142, 144.

16-2709. (4781) Liability for refusing to levy or sell.

References

Cited or applied in *Stokke v. Graham*,
129 M 96, 281 P 2d 1025, 1027.

16-2723. (4885) Mileage and expense of sheriff. Sheriffs delivering prisoners at the state prison or mentally ill persons at the state hospital, shall receive actual expenses necessarily incurred in their transportation, which shall include the expenses of the sheriff in going and returning from such institution. They shall take vouchers for every item of expenses incurred by them in such transportation, the amount of which expenses, as shown by the said vouchers when served by said sheriff, shall be audited and allowed by the state controller or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties, and no other or further compensation shall be received by sheriffs for such expenses, provided that in determining the actual expense, if travel be by a privately owned vehicle, the mileage rate shall be allowed as herein provided. While in the discharge of his duties, both civil and criminal, the sheriff shall receive eleven cents (11¢) per mile for each and every mile actually and necessarily traveled; and for transporting any person by order of court, except as hereinbefore provided, he shall receive eleven cents (11¢) additional per mile, the same to be in full for transporting and dieting of such person during such transporta-

tion; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged. The county shall not be liable for, nor shall the board of county commissioners pay for any claim of the sheriff or other officer, for any other expense incurred in travel or for subsistence, in cases where mileage is allowed under this section; the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work.

History: En. Sec. 1, Ch. 86, L. 1905; re-en. Sec. 3137, Rev. C. 1907; re-en. Sec. 4885, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1941; amd. Sec. 1, Ch. 59, L. 1949; amd. Sec. 1, Ch. 82, L. 1957; amd. Sec. 85, Ch. 199, L. 1965.

Compiler's Note

Section 2 of Ch. 82, Laws 1957 amended sec. 25-226. Section 3 was a general repealing clause and section 4 made the act effective upon its approval. Approved March 2, 1957.

Amendments

The 1957 amendment increased the rate received per mile from nine cents to eleven cents and in the last sentence deleted the words "team or horse hire, or" which appeared immediately before the words "any other expense."

The 1965 amendment substituted "mentally ill persons at the state hospital" for "at the state reform school, or insane persons at the state insane asylum" near the beginning of the section; and substituted "the state controller" for "the state board of examiners" after "audited and allowed by" in the second sentence.

CHAPTER 28—COUNTY JAILS

Section 16-2818. Sheriff to receive all persons duly committed—medical expense.

16-2803. (12468) County jails, by whom kept and for what used.

References

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

16-2807. (12472.1) Sheriff must receive federal prisoners.

References

Cited or applied in *State v. MacLean*, 129 M 500, 291 P 2d 250, 252.

16-2818. (12482) Sheriff to receive all persons duly committed—medical expense. The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation, to be determined by the board of county commissioners, and, except as provided in the next section, to be paid out of the county treasury. If in the opinion of the sheriff any prisoner requires medication, medical services or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained.

History: En. Sec. 3036, Pen. C. 1895; re-en. Sec. 9773, Rev. C. 1907; re-en. Sec. 12482, R. C. M. 1921; amd. Sec. 1, Ch. 179, L. 1965. Cal. Pen. C. Sec. 1611.

Amendment

The 1965 amendment added the second sentence.

CHAPTER 29—COUNTY CLERK

- Section 16-2903. Recordation of certain instruments declared proper.
 16-2905. Indexes to be kept.
 16-2922. Seed and threshers' liens to be retained eight years from and after extinction of lien.
 16-2923. Destruction of records, when allowed.
 16-2926. Membership in associations and organizations—payment from county funds.

16-2903. (4797) Recordation of certain instruments declared proper.
 All instruments which have heretofore been filed for record in the several recorders' offices of the state of Montana, including all instruments which were offered for record pursuant to the previous section, which have been recorded in the offices of the recorders of the several counties by being correctly copied, separately, in large and well-bound, or to be bound, separate books, either in fair hand or by printing or by typewriting, or by the use of prepared blank forms, or by being so inscribed or printed on a single loose-leaf or leaves of a book, which leaf or leaves have heretofore or are to become a permanent part of any such book or volume, which, when completed, has or shall have the pages thereof securely locked, sealed, or bound into the volume, shall be and are hereby declared to be properly recorded under the laws of the state of Montana.

All instruments included in section 1 above, may be recorded and preserved by use of microfilm in lieu of handwriting, typewriting, or printing, and the same shall be and are hereby declared to be properly recorded under the laws of the state of Montana.

History: En. Sec. 1, Ch. 138, L. 1917;
 re-en. Sec. 4797, R. C. M. 1921; amd. Sec.
 1, Ch. 116, L. 1959.

Amendment

The 1959 amendment added the second paragraph to this section.

Compiler's Note

The reference in the second paragraph to section 1 above apparently is a reference to the first paragraph of this section.

Cross-Reference

Recording of documents and records by photostatic or other process, secs. 16-2428 to 16-2431.

16-2905. (4799) Indexes to be kept. Every county clerk, as ex officio recorder, must keep:

1. An index of deeds, grants, and transfers, and contracts to sell or convey real estate, labeled "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, transfers, or contracts," and "Where recorded";
2. An index of deeds, labeled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Date of deeds, grants, transfers, or contracts," and "Where recorded";
3. An index of mortgages, labeled "Mortgages of real property," with the pages thereof divided into six columns, headed respectively: "Names of Mortgagor," "Names of mortgagees," "Dates of mortgages," "Where recorded," "When filed," "When canceled";
4. An index of mortgages, labeled "Mortgages of real property," with the pages thereof divided into six columns, headed respectively: "Names of Mortgagees," "Names of mortgagors," "Date of mortgage," "Where recorded," "When filed," "When canceled";

5. An index of mortgages, labeled "Releases of mortgages of real property—Mortgagees," with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released," "Parties releasing," "Date of release," "Where recorded," "Date of mortgages released," "Where mortgages released are recorded."

6 to 26. * * * [Same as parent volume.]

27. An index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions.

28. A miscellaneous index, in which must be indexed papers not hereinbefore stated. [Effective January 1, 1965.]

History: En. Sec. 4412, Pol. C. 1895; re-en. Sec. 3033, Rev. C. 1907; re-en. Sec. 4799, R. C. M. 1921; amd. Sec. 11-111, Ch. 264, L. 1963. Cal. Pol. C. Sec. 4236.

Amendment

The 1963 amendment deleted provisions in paragraphs 3, 4, and 5 for indexes to be labeled "Mortgages of personal property" and "Releases of mortgages of personal

property—Mortgagees"; substituted "six columns" for "five columns" in paragraphs 3 and 4; deleted "or 'Where Filed'" which followed "Where recorded" in paragraph 5; deleted "or if personal property, 'When filed'" at the end of paragraph 5; made minor changes in phraseology in paragraphs 3, 4, and 5; inserted paragraph 27; and renumbered former paragraph 27 as 28.

16-2917. (4811) Duties of county clerk.

Cross-Reference

Duties regarding issuance of identification cards showing age of 21 reached, secs. 4-506 to 4-508.

16-2921. (4813.2) Repealed.

Repeal

This section (Sec. 1, Ch. 46, L. 1931), authorizing destruction of chattel mortgages, conditional sales contracts and

satisfactions after ten years, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

16-2922. (4813.3) Seed and threshers' liens to be retained eight years from and after extinction of lien. All seed liens and threshers' liens, which have heretofore or shall hereafter be filed for record in the office of any county clerk and recorder of the several counties in the state shall be retained by such county clerk in a file kept by him for such purposes, for a period of eight years from and after the time when said seed lien, or threshers' lien has ceased to be a lien on the property described therein.

History: En. Sec. 1, Ch. 113, L. 1935; amd. Sec. 11-112, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "chattel mortgages, conditional sales contracts" after "All" at the beginning of the section; deleted "and the office of the regis-

trar of motor vehicles" after "several counties in the state"; deleted "or registrar of motor vehicles" after "such county clerk"; deleted "mortgage, conditional sales contract" after "after the time when said"; and deleted "either by virtue of the original mortgage or any renewal thereof" at the end of the section.

16-2923. (4813.4) Destruction of records, when allowed. Upon the expiration of the period of time specified in section 16-2922, the county clerk and recorder may destroy all seed liens and threshers' liens which

have been preserved for the period of time specified in this act. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 113, L. 1935; amd. Sec. 11-113, Ch. 264, L. 1963.

and recorder"; and deleted "chattel mortgages, conditional sales contracts" before "seed liens."

Amendment

The 1963 amendment deleted "or registrar of motor vehicles" after "county clerk

16-2926. Membership in associations and organizations—payment from county funds. The county clerk and recorders of the counties of the state of Montana are hereby authorized and empowered to take out county membership in, and to cooperate with, associations and organizations of county clerk and recorders of this state and of other states for the furtherance of good government and the protection of county interests, and to pay for such membership in such associations or organizations out of county funds.

History: En. Sec. 1, Ch. 84, L. 1963.

recorders may take out memberships in certain organizations at the expense of the county.

Title of Act

An act to provide that county clerk and

CHAPTER 31—COUNTY ATTORNEY

Section 16-3101. Duties of county attorney.

16-3101. (4819) Duties of county attorney. The county attorney is the public prosecutor, and must:

1 to 6. * * * [Same as parent volume.]

7. Act as counsel, without fee, for fire districts in unincorporated territories, towns or villages within his county;

8. * * * [Same as 7 in parent volume.]

9. * * * [Same as 8 in parent volume.]

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R. C. M. 1921; amd. Sec. 1, Ch. 187, L. 1935; amd. Sec. 1, Ch. 17, L. 1965. Cal. Pol. C. Sec. 4256.

trict Court, 142 M 52, 381 P 2d 470; Clark v. District Court, 142 M 56, 381 P 2d 472.

Power of Attorney General to Institute Actions in District Courts

Amendment

The 1965 amendment inserted paragraph 7 and renumbered the succeeding paragraphs.

The statutes of this state do not authorize the institution of an action in the district courts by the attorney general on behalf of the state but rather they specifically state that such an action must be brought by the county attorney of the county, however, under the common-law powers and duties of the attorney general he can institute such an action where the public interest is affected and the state is a party in interest. State ex rel. Olsen v. Public Service Commission, 129 M 106, 283 P 2d 594.

Legal Adviser of Justice of Peace

It is the duty of the county attorney to advise the justice of the peace in preparation of a proper record for appeal to the district court and improper submission of such record may not bar defendant's right to appeal. Reidelbach v. Dis-

CHAPTER 32—COUNTY AUDITOR

Section 16-3201. Creation of office of county auditor.

16-3205. Location of principal office—salary.

16-3201. (4824) Creation of office of county auditor. The office of county auditor is hereby created and the same shall exist in all counties of the state of Montana of the first, second, third and fourth classes. Provided, however, that the provisions of this act shall not apply to counties having a population of less than fifteen thousand (15,000) persons according to the last federal census of 1960. In counties of the 5th class where a county auditor has been elected he shall hold office until the expiration of his present term, but no longer.

History: En. Sec. 1, p. 227, L. 1891; re-en. Sec. 4560, Pol. C. 1895; re-en. Sec. 3100, Rev. C. 1907; re-en. Sec. 4824, R. C. M. 1921; amd. Sec. 1, Ch. 117, L. 1923; amd. Sec. 1, Ch. 52, L. 1961.

Effective Date

Section 2 of Ch. 52, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved February 23, 1961.

Amendment

The 1961 amendment added the proviso to the first sentence.

16-3205. (4827) Location of principal office—salary. The county auditor shall keep his principal office at the county seat of the county for which he shall have been elected or appointed, and he shall receive the annual compensation provided by law, payable monthly by warrants drawn on the treasury of the county treasurer, and shall receive no other compensation or emolument whatsoever for any service or services rendered or performed by him, except actual expenses for living and traveling whenever the duties of his office require his presence at any place in the county, other than the county seat, and then only after the same has been ordered and advised by the board of county commissioners.

History: En. Sec. 4, p. 228, L. 1891; re-en. Sec. 4563, Pol. C. 1895; re-en. Sec. 3103, Rev. C. 1907; re-en. Sec. 4827, R. C. M. 1921; amd. Sec. 1, Ch. 72, L. 1965.

stituted "payable monthly" for "payable quarterly" after "annual compensation provided by law."

Effective Date

Section 2 of Ch. 72, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

Amendment

The 1965 amendment deleted "reside and" before "keep his principal office" near the beginning of the section; and sub-

16-3211. (4833) Repealed.

Repeal

This section (Sec. 10, p. 230, L. 1891), relating to the county auditor as county

superintendent of the poor, was repealed by Sec. 1, Ch. 51, Laws 1957.

CHAPTER 33—COUNTY SURVEYOR

Section 16-3302. County surveyor to work under direction of county commissioners—approval of commissioners required to contract indebtedness—duties of county surveyor.

16-3302. (4836) County surveyor to work under direction of county commissioners—approval of commissioners required to contract indebtedness—duties of county surveyor. (1) The county surveyor shall work

under the direction of the board of county commissioners, but shall have no power or authority to incur any indebtedness on the part of the county without the prior order or approval of the board.

(2) He shall make all surveys, establish all grades, and prepare plans, specifications, and estimates.

(3) He shall make progress reports and estimates of all work, and such other facts in relation thereto, as may be required by the board. [Effective December 31, 1966.]

History: En. Sec. 2, Ch. 50, L. 1919; amd. Sec. 1, Ch. 29, Ex. L. 1919; re-en. Sec. 4836, R. C. M. 1921; amd. Sec. 12-104, Ch. 197, L. 1965.

Amendment

The 1965 amendment divided the section into numbered subsections; substituted "prior order or approval of the board" at the end of subsection (1) for "order or approval of the board of coun-

ty commissioners being first obtained therefor"; deleted a clause reading, "he shall report any delinquency or inefficiency of any road overseer or other person employed upon the roads within his county"; substituted "the board" at the end of subsection (3) for "the state highway commission, board of county commissioners, or both"; and made other minor changes in phraseology.

16-3311, 16-3312. (4845, 4846) **Repealed.**

Repeal

These sections (Secs. 4476, 4477, Pol. C. 1895), relating to inspection of roads by the surveyor and prohibiting him from

having any interest in road contracts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 34—COUNTY CORONER

Section 16-3410. Payment of costs of inquest.

16-3410. (4857) **Payment of costs of inquest.** Whenever such an inquest is held the county clerk of the county where such inquest is had shall make out a statement of all the costs incurred by the county in such inquest, properly certified by the coroner of said county, which statement shall be sent to the department of institutions for approval; and after such approval, the department must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison to the county treasurer of the county where such inquest was had.

History: En. Sec. 2, Ch. 122, L. 1909; re-en. Sec. 4857, R. C. M. 1921; amd. Sec. 86, Ch. 199, L. 1965.

department of institutions" and "the department" for "the board of state prison commissioners" and "said board"; and made several minor changes in phraseology.

Amendment

The 1965 amendment substituted "the

CHAPTER 36—CONSTABLE AND JUSTICES OF THE PEACE

Section 16-3605. Justices not to practice law.

16-3605. (4863) **Justices not to practice law.** No justice of the peace shall practice law, draw contracts, conveyances, or other legal instruments or documents, nor shall they take any claim or bill for collection, nor act as a collection agent in any sense whatever, nor shall they perform any legal duties other than those prescribed by law as their official

duties in the conduct of cases and proceedings in their courts. Any justice of the peace violating any of the provisions in this section shall be deemed guilty of a malfeasance in office, and shall forthwith be removed from his office of justice of the peace, and shall thereafter be disqualified from holding such office.

Provided, however, that a justice of the peace who is an attorney and who is admitted to practice law before the supreme court of the state of Montana may engage in the general practice of law and practice law in all courts in the state of Montana except that such a justice of the peace, his law partner, associate, member, associate or employee of firm of which he is a member shall not represent a party involved in a case filed or tried in his court or in any justice court located in the same township as his court, or which is appealed from said courts.

History: En. Sec. 3, p. 92, L. 1901; re-en. Sec. 3114, Rev. C. 1907; re-en. Sec. 4863, R. C. M. 1921; amd. Sec. 1, Ch. 228, L. 1959.

by justices of the peace in certain instances.

Repealing Clause

Section 2 of Ch. 228, Laws 1959 repealed all acts and parts of acts in conflict with the provisions of this act.

Amendment

The 1959 amendment added the proviso clause authorizing the practice of law

CHAPTER 37—DEPUTY COUNTY OFFICERS

16-3701. (4875) Number of deputies allowed.

History Correction

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec.

2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R. C. M. 1921; amd. Sec. 1, Ch. 69, L. 1953.

16-3705. (4879) Qualifications of deputy sheriffs, marshals, etc.

City Policemen

A city was not bound by any of the provisions hereof in the appointment of a regular policeman and was not pro-

hibited from appointing a policeman who had not been a resident for six months. *McBroom v. City of Polson*, 137 M 33, 349 P 2d 1023.

CHAPTER 41—COUNTY PLANNING AND ZONING DISTRICTS

16-4101. Planning and zoning districts—commission—creation.

Constitutionality

This chapter does not contravene Article IV, sec. 1 of the Montana Constitution as an unlawful delegation of power, since sufficient guidelines are set out. *City of Missoula v. Missoula County*, 139 M 256, 362 P 2d 539, 542, explained in 139 M 263, 267, 362 P 2d 1021, 1023; *Doull v. Wohlschlager*, 139 M 274, 362 P 2d 542, 543.

and zoning district and to make a survey in portions of the county in the absence of a petition by sixty percent of the freeholders. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 762. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

A county wide survey is unnecessary for the establishment of a planning and zoning district unless authorized by the requisite petition under this section. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

Petition for Establishment

A board of county commissioners does not have the power to create a planning

16-4102. Development pattern.

Composition of District

District court was in error in holding that a planning and zoning district must

comprise an area of forty acres none of which are used for grazing, horticulture, agriculture or the growing of timber, since

section 16-4107, defining a district, makes no such distinction. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

Construction

Since the legislature uses the word "district" in the plural in the second sentence of this section and in the singular in the first sentence, it must be assumed that the legislature knew the difference and intended the use of the singular when so used. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 762. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

The word "used" in the last sentence of this section is a verb used in a noun phrase as a participial adjective rather than in the past tense of the verb form. When a verb is so used it indicates a present rather than a past meaning. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

County Wide Survey

It is unnecessary to make a county wide survey unless so authorized by the requisite petition under 16-4101. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

Farm Lands

Lands used for grazing, horticulture, agriculture or the growing of timber at the time of survey are not thereafter exempt from regulation. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763.

(Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

The legislature intended under this section to preserve the identity of farm lands from the encroachment of expanding towns and cities, but only so long as they are so employed. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 764. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

Maps and Plats

The need for maps and plats under this section would only seem to exist when the planning and zoning commission has divided the district into separate areas within which it is permissible, and other areas within which it is not permissible to erect and maintain certain types of "industries, trades or callings." Such a provision is intended to provide notice where the regulations may vary from block to block and lot to lot. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

Residential Units

The planning and zoning commission has complied with the provisions of this section requiring it "to make and adopt a development pattern for the physical and economic development of the planning and zoning district" when it provides for residential expansion and the protection of economic values by restricting the development to residential units. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

16-4105. Regulations—appeals—permits for construction.

Appeals

An aggrieved party may appeal any decision of the county commissioners within thirty days after such decision was made

to the district court. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 766. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

16-4107. "District" defined.

Construction

A district under this section need not comprise an area of forty acres none of which are used for grazing, horticulture, agriculture or the growing of timber. *Doull v. Wohlschlager*, 141 M 354, 377 P

2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

This section contemplated districts which would be less than an entire county. *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 763. (Dissenting opinion, 141 M 354, 377 P 2d 758, 766.)

CHAPTER 44—METROPOLITAN SANITARY AND/OR STORM SEWER SYSTEMS

Section 16-4401. Metropolitan sanitary and/or storm sewer districts—resolution of intention—contents.

16-4402. City or town concurrence in resolution—notice.

16-4403. Protests and hearing.

16-4404. Resolution creating district.

- 16-4405. Description.
- 16-4406. Federal property omitted from assessment.
- 16-4407. Method of assessment.
- 16-4408. Cost of making improvements in special improvement districts—resolution, levy, and assessment.
- 16-4409. Resolution—notice—hearing.
- 16-4410. Assessments as lien.
- 16-4411. Ex-officio commissioners of district—jurisdiction.
- 16-4412. Federal funds for local public works programs.
- 16-4413. Applicable provisions of rural improvement district act.
- 16-4414. Boundary changes.
- 16-4415. Area polluting a watercourse.
- 16-4416. Rates, charges and rentals for services.
- 16-4417. Reserve fund.
- 16-4418. Previous proceedings validated.

16-4401. Metropolitan sanitary and/or storm sewer districts—resolution of intention—contents. Whenever the public convenience and necessity may require in order to construct sanitary and/or storm sewer systems within any county, and which said sanitary and/or storm sewer systems would serve the inhabitants of any county as well as the inhabitants of any city or town within said county, the board of county commissioners with the approval of the city or town council may create metropolitan sanitary and/or storm sewer districts.

Before creating any metropolitan sanitary and/or storm sewer district the board of county commissioners shall pass a resolution of intention so to do, which said resolution shall designate:

- (a) the proposed name of such district,
- (b) the necessity for the proposed district,
- (c) a general description of the territory or lands to be included within said district, giving the boundaries thereof,
- (d) the general character of the sanitary and/or storm sewer system and its proposed location,
- (e) the name of the engineer who is to have charge of the work, and
- (f) the estimated cost thereof.

History: En. Sec. 1, Ch. 185, L. 1957.

Title of Act

An act relating to the creation of metropolitan sanitary and storm sewer districts to serve inhabitants of both cities and incorporated towns and rural areas within counties; to empower the county commissioners to create metropolitan sanitary districts with the consent of city or town councils for the purpose of constructing sanitary or storm sewer systems; provid-

ing for the levy and collection of special assessments to pay for the same; and to adequately maintain same and extend payment of installments over any period not exceeding twenty years; to provide for the issuance of special improvement warrants or bonds in such metropolitan sanitary or storm sewer districts; providing for the powers and duties of the county commissioners in respect thereto; and repealing chapter 292, Laws of 1947.

16-4402. City or town concurrence in resolution—notice. Upon passage of such resolution of intention, the board of county commissioners shall transmit a copy of the same to the executive head of any city or town within the proposed district for consideration by such city or town council, and if the city or town council shall by resolution concur in the resolution of the board of county commissioners a copy of the resolution of concurrence shall be transmitted to the board of county commissioners.

If the city or town council does not concur in the resolution of the board of county commissioners, the board shall have no authority to proceed further with the creation of the district. However, if the city or town council concurs in the resolution of the board of county commissioners, the board must give notice of the passage of its resolutions of intention, and of the concurrence therein by the city or town council, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning property within the proposed district, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries.

History: En. Sec. 2, Ch. 185, L. 1957.

16-4403. Protests and hearing. At any time within thirty days after the date of the first publication of the passage of the resolution or intention, any owner of property liable to be assessed for said work may make written protest against the proposed work. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him. At the next regular meeting of the board of county commissioners, after the expiration of the time within which said protest may be so made, the board of county commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, if the protest against the proposed work is made by the owners of more than fifty per cent of the area in the proposed district, no further proceedings shall be taken by the board of county commissioners.

In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts shall be considered the same as any other property in the district. The board of county commissioners may adjourn said hearing from time to time.

History: En. Sec. 3, Ch. 185, L. 1957.

16-4404. Resolution creating district. When no protests have been delivered to the county clerk within thirty days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said board of county commissioners to be insufficient, or shall have been overruled, immediately there-

upon the board of county commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the board of county commissioners shall pass a resolution creating the said metropolitan sanitary and/or storm sewer district in accordance with the resolution of intention theretofore introduced and passed by the board of county commissioners.

History: En. Sec. 4, Ch. 185, L. 1957.

16-4405. Description. In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvements it shall be sufficient to briefly describe the work or the metropolitan sanitary and/or storm sewer district, or both, and to refer to the resolution of intention for further particulars.

History: En. Sec. 5, Ch. 185, L. 1957.

16-4406. Federal property omitted from assessment. Whenever any lot, piece or parcel of land belonging to the United States or mandatory of the government shall front upon the proposed work or improvement, or is to be included within the district declared by the board of county commissioners in its resolution of intention to be a district to be assessed to pay the cost and expenses thereof, the said board of county commissioners shall in the resolution of intention declare that the said lots, pieces or parcels of land or any of them shall be omitted from the assessment thereto to be made to cover the cost and expenses of said work or improvement, and the cost of said work or improvement in front of said lots, pieces or parcels of land shall be paid by the county from its general fund.

History: En. Sec. 6, Ch. 185, L. 1957.

16-4407. Method of assessment. To defray the cost of installing and maintaining either sanitary or storm sewer systems under the provisions of this act, the board of county commissioners shall adopt the following method of assessment: The board of county commissioners shall assess the entire cost of the improvements against the entire metropolitan sanitary district, and each lot or parcel of land assessed in such district is to be assessed with that part of the whole cost which its area bears to the area of the entire district, exclusive of streets, avenues, alleys and public places.

History: En. Sec. 7, Ch. 185, L. 1957.

16-4408. Cost of making improvements in special improvement districts—resolution, levy, and assessment. To defray the cost of making improvements in any special improvement district, the board of county commissioners shall, by resolution, levy and assess a tax upon all property in the district created for such purpose, by using for a basis for such assessment the method provided for by this act. Such resolution shall contain a description of each lot or parcel of land, with the name of the owner, if known, and the amount of each partial payment, when made, and the day when the same shall become delinquent. The payment of the assessment to defray the cost of constructing any improvements in said metro-

politan sanitary and/or storm sewer districts may be spread over a term of not to exceed twenty (20) years, payment to be made in equal installments.

History: En. Sec. 8, Ch. 185, L. 1957.

16-4409. Resolution—notice—hearing. Such resolution, signed by the chairman of the board of county commissioners, shall be kept on file in the office of the county clerk, and a notice signed by the county clerk, stating that the resolution levying a special assessment to defray the cost of making such improvements is on file in the office of the county clerk, subject to inspection, shall be published in at least one publication in a newspaper published nearest to where the special improvement is to be made. Such notice shall state the time and place in which objections to the final adoption of such resolution will be heard by the board of county commissioners, and the time for such hearing shall be not less than five days after the publication of such notice. At the time so fixed, the board of county commissioners shall meet and hear all such objections, and for that purpose may adjourn from day to day and may by resolution modify such assessment in whole or in part. A copy of such resolution, certified by the county clerk, must be delivered to the county treasurer two days after its passage.

History: En. Sec. 9, Ch. 185, L. 1957.

16-4410. Assessments as lien. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien upon and against the property upon which such assessment is made and levied, and from and after the date of the passage of the resolution levying such assessment, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

History: En. Sec. 10, Ch. 185, L. 1957.

16-4411. Ex-officio commissioners of district—jurisdiction. The board of county commissioners shall be ex-officio commissioners of the metropolitan sanitary and/or storm sewer district formed under the provisions of this act, and shall have sole and complete jurisdiction over all drainage structures and sewage treating plants which are now or may be hereafter built and situated within said district. The commission shall be responsible for the proper functioning and maintenance thereof, and for the condition and maintenance of all publicly owned streets, alleys, land, parks or other thoroughfares within the boundaries of such district insofar as such may be affected by the construction or maintenance of the structures under control and jurisdiction of such district.

History: En. Sec. 11, Ch. 185, L. 1957.

16-4412. Federal funds for local public works programs. The board of county commissioners are hereby authorized to apply for, and receive from, the federal government on behalf of said metropolitan sanitary and/or storm sewer district, any moneys that may be appropriated by

the congress for aiding in local public works projects, and likewise the board of county commissioners may borrow from the federal government any funds available for assisting in the planning or financing of local public works projects, and repay the same out of the moneys received from the tax levy provided for in this act.

History: En. Sec. 12, Ch. 185, L. 1957.

16-4413. Applicable provisions of rural improvement district act. The provisions of sections 16-1607, 16-1608, 16-1609, 16-1610, 16-1615, 16-1616, 16-1619, 16-1620, 16-1621, 16-1622, 16-1623, 16-1624, 16-1625, 16-1626, 16-1627 and 16-1628, Revised Codes of Montana, 1947, pertaining to the powers and duties of the county commissioners in rural improvement districts shall likewise apply under the provisions of this act.

History: En. Sec. 13, Ch. 185, L. 1957.

Compiler's Note

Section 16-1621, referred to in this section, was repealed by Sec. 1, Ch. 136, Laws 1961.

Repealing Clause

Section 14 of Ch. 185, Laws 1957 read

"Chapter 292, Laws of 1947, is hereby repealed, providing however, that any metropolitan sanitary sewer districts established under the provisions of chapter 292, Laws of 1947, shall be valid, and any obligations incurred thereunder shall in nowise be affected by the repeal of said chapter 292, Laws of 1947."

16-4414. Boundary changes. The county commissioners may by resolution make such changes in the boundaries of a district as they shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands. They may not delete any portion of the proposed area which is contributing or may reasonably be expected to contribute to the pollution of any watercourse or a body of water in the proposed area. Nothing herein, however, shall permit the assessment of the cost of any such system against the lands remaining in the district, after any such boundary change, at a rate per square foot higher than the rate per square foot which would have been so assessed if the entire cost of the improvements as estimated in the resolution of intention had been assessed against each lot and parcel of land included within the boundaries of the district as described in said resolution of intention, unless a new resolution of intention to recreate the district is adopted and a hearing held thereon upon notice as required for the original resolution of intention.

History: En. 16-4414 by Sec. 1, Ch. 165, L. 1965.

Title of Act

An act to amend chapter 44 of Title 16, R. C. M. 1947, as amended, by adding sections 16-4414 to 16-4418, both inclusive, R. C. M. 1947, relating to metropolitan sanitary and/or storm sewer districts; changes in the boundaries thereof; definition of an act defining what is an area polluting a watercourse; the establish-

ment of rates, charges and rentals for the services and benefits of systems constructed by such districts, to provide for the operation and maintenance of such systems and for deficiencies in bond and interest accounts of district funds; the creation of reserve funds to provide for such deficiencies; and the validation of actions and proceedings heretofore taken in the establishment of such district; providing an effective date.

16-4415. Area polluting a watercourse. For the purpose of this chapter it will be conclusively presumed that an area which is within fifteen

hundred (1500) feet of a proposed or existing sanitary sewer, is contributing to the pollution of a watercourse in the proposed area.

History: En. 16-4415 by Sec. 2, Ch. 165, L. 1965.

16-4416. Rates, charges and rentals for services. The board of county commissioners shall have full power and authority by ordinance or resolution to fix and establish just and equitable rates, charges and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system construction in and for a metropolitan sanitary and/or storm sewer district formed under this chapter. Such rates, charges and rentals shall be as nearly as possible equitable in proportion to the services and benefits rendered, and may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The board of county commissioners shall have authority to fix and establish the sewer rates, charges and rentals at amounts sufficient in each year to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system, and for the transfer to the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in section 16-4417, and for the payment of any cost[s] of the sewer system which are not fully paid from the assessments levied and the bonds issued therefor.

History: En. 16-4416 by Sec. 3, Ch. 165, L. 1965.

16-4417. Reserve fund. The board of county commissioners may, in order to secure prompt payment of any metropolitan sanitary and/or storm sewer district bonds issued in payment of the cost of improvements in and for the district, and the interest thereon as it becomes due, create, establish and maintain by resolution a fund to be designated as the "reserve fund" for each issue of such bonds. For the purpose of providing money for the reserve fund the board of county commissioners may in its discretion, from time to time, transfer to the reserve fund from the operation and maintenance fund of the district such amount or amounts as may be deemed necessary or as may be agreed with the holders of the bonds, which amount or amounts so transferred shall be deemed and considered as loans from the operation and maintenance fund to the reserve fund. In connection with the issuance of metropolitan sanitary and/or storm sewer district bonds, the board of county commissioners may undertake and agree to issue orders annually authorizing loans or advances from the reserve fund to the fund maintained for the payment of the bonds, in amounts sufficient to make good any deficiency in the bond and interest accounts thereof to the extent that money is available, and may further undertake and agree to provide money for the reserve fund pursuant to the provisions of section 16-4416, by establishing and collecting rates, charges and rentals for sewer services and benefits in amounts sufficient to provide net revenues, in excess of the current costs of operation and maintenance of the system, sufficient to maintain such balance in the reserve fund as the board of county commissioners may so agree

to and undertake; which said undertakings and agreements shall be binding upon the county as long as any of said bonds so offered, or any interest thereon, remains unpaid. Whenever any loan is made to any bond fund from the reserve fund, the reserve fund shall have a lien therefor on the land within the district which is delinquent in the payment of its assessments, and on all unpaid assessments and installments of assessments on the district, whether delinquent or not, and on all moneys thereafter coming into the bond fund, to the amount of such loan, together with interest thereon from the time it was made at the rate or percentage borne by the bond for payment of which, or of interest thereon, such loan was made; and whenever there shall be money in the bond fund which is not required for payment of any bond of the district or interest thereon, so much as may be necessary to pay such loan shall, by order of the board of county commissioners, be transferred to the reserve fund. If after all the bonds of the district have been fully paid and all money remaining in the bond fund has been transferred to the reserve fund there still remains a debt from the district to the reserve fund, the board of county commissioners may foreclose the lien upon property within the district owing unpaid assessments to the district for the purpose of paying off said loan to the reserve fund. Nothing herein shall permit the repayment of any loan to the reserve fund at any time unless all interest theretofore accrued on the bonds has been fully paid, and all principal theretofore agreed to be paid in accordance with such redemption schedule as may be provided in the resolution or resolutions authorizing such bonds.

History: En. 16-4417 by Sec. 4, Ch. 165, L. 1965.

16-4418. Previous proceedings validated. All proceedings heretofore taken for the creation of any metropolitan sanitary and/or storm sewer district and the establishment of the boundaries thereof and the hearing of protests thereon and the construction or contracting for construction of sanitary and/or storm sewer systems in and for such districts and the authorization and issuance of bonds therefor are hereby validated, ratified, approved and confirmed.

History: En. 16-4418 by Sec. 5, Ch. 165, L. 1965. ed the act should be in effect from and after its passage and approval. Approved March 4, 1965.

Effective Date

Section 6 of Ch. 165, Laws 1965 provid-

CHAPTER 45—COUNTY WATER DISTRICTS

- Section 16-4501.** Organization of county water districts authorized.
16-4502. Organization of county water districts.
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- 16-4530. Referendum.
- 16-4531. Adding to and consolidation of district.
- 16-4532. Definitions.
- 16-4533. Exclusion of territory—petition—contents—duties of secretary—hearing—order excluding lands.
- 16-4534. Directors may institute proceedings for exclusion—hearing—referendum.

16-4501. Organization of county water districts authorized. A county water district may be organized and incorporated and managed as herein expressly provided and may exercise the powers herein expressly granted or necessarily implied.

History: En. Sec. 1, Ch. 242, L. 1957.

Title of Act

An act to provide for the incorporation and organization and management of county water districts; to provide for the acquisition of water-rights or construction thereby of water-works; and for the acquisition of all property necessary therefor; and also to provide for the distribution and sale of water by said districts; providing for severability and an effective date.

Constitutionality

The county water district act (16-4501 to 16-4534) is not unconstitutional on the ground that there is an invalid delegation of power by the legislature because in-

adequate standards are provided in the act since the provisions of the act are sufficiently clear, definite, and certain to enable the county water district to know its rights and obligations. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 333.

The title of the county water district act (16-4501 to 16-4534) is not defective because it provides only for the construction of waterworks since the provisions in the body of the act for water tax and bond tax are germane to that part of the title dealing with construction of water-works and such taxes are necessary to accomplish the general objects of the bill. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 334.

16-4502. Organization of county water districts. The people of any county or counties, or portion of a county, or city and county, or any combination of these political divisions, whether such portion includes unincorporated territory or not, in the state of Montana, having a population of not less than two hundred (200) inhabitants, may organize a county water district under the provisions of this act by proceeding as herein provided.

History: En. Sec. 2, Ch. 242, L. 1957; amd. Sec. 1, Ch. 167, L. 1965.

Amendment

The 1965 amendment inserted "or coun-

ties" after "people of any county"; inserted "or any combination of these political divisions"; and reduced the population requirement from 300 to 200 inhabitants.

16-4503. Petition—boundaries of district—publication. A petition, which may consist of any number of separate instruments, shall be presented at a regular meeting of the board of commissioners of the county in which the proposed water district is located, signed by the registered voters within the boundaries of the proposed water district, equal in number to at least ten per centum (10%) of the registered voters of the territory included in such proposed water district. When the territory to be included in such proposed water district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which said territory lies and each of said petitions must be signed by at least ten per centum (10%) of the registered voters of the territory within said county to be included within such proposed water district. Such petition shall set forth and describe the proposed boundaries of such water district, and shall pray that the same be incorporated under the provisions of this act, and the text of such petition shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in every county in which said territory lies, together with a notice stating the time of the meeting at which same will be presented. The first publication shall be at least two (2) weeks before the time at which the petition is to be presented. When contained upon more than one (1) instrument, one (1) copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated.

History: En. Sec. 3, Ch. 242, L. 1957; amd. Sec. 2, Ch. 167, L. 1965.

Amendment

The 1965 amendment inserted the sec-

ond sentence; and substituted "every county in which said territory lies" for "such county" after "printed and published in" in the present third sentence.

16-4504. Time of consideration—final hearing. With such publication there shall be published a notice of the time of the meeting of the board when such petition will be considered and that all persons interested therein may then appear and be heard. At such time the board of commissioners shall hear the petition and those appearing thereon together with such written protests as shall have been filed with the county clerk and recorder prior to such hearing by or on behalf of owners of taxable property situated within the boundaries of the proposed district within the county and may adjourn such hearing from time to time, not exceeding four (4) weeks in all. No defect in the contents of the petition or in the title to or form of the notice or signatures, or lack of signatures, thereto shall vitiate any proceedings thereon, provided such petition or petitions have a sufficient number of qualified signatures attached thereto. On the final hearing said board shall make such changes in the proposed boundaries which be within the county as may be deemed advisable and shall define and establish such boundaries, but said board shall not modify

said boundaries as to exclude from such proposed district any territory which would be benefited by the formation of such district; nor shall any lands which will not, in the judgment of said board, be benefited by such district be included within such proposed district. Any person whose lands are benefited by such district may upon his application, to the board of the county in which his lands be in the discretion of said board, have such lands included within said proposed district.

History: En. Sec. 4, Ch. 242, L. 1957; amd. Sec. 3, Ch. 167, L. 1965.

Amendment

The 1965 amendment inserted "within the county" after "boundaries of the proposed district" near the end of the second

sentence; inserted "which be within the county" after "proposed boundaries" in the fourth sentence; and inserted "to the board of the county in which his lands be" after "upon his application" in the final sentence.

16-4505. Proposition submitted—who may vote—certificate of secretary of state—district deemed incorporated—must hear testimony—suit commenced within one year—election. Upon such hearing of said petition, the board of commissioners shall determine whether or not said petition complies with the requirements of the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of commissioners. A finding of the board of commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within one (1) year after the order of the board of commissioners declaring such district organized as herein provided, and not otherwise. Upon the final determination of the boundaries of the district the board of commissioners of each county in which said district lies shall give notice of an election to be held in said proposed water district for the purpose of determining whether or not the same shall be incorporated, the date of which election shall be not more than sixty (60) days from the date of the final hearing of such petition. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words "_____ county water district"), and this notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper printed and published in every county in which said district lies. The first publication shall be made at least two (2) weeks before the time at which the election is to be held. At such election the proposition to be submitted shall be: "Shall the proposition to organize _____ county water district under (naming the chapter containing this act) of the acts of the _____ session of the Montana legislature and amendments thereto be adopted?" And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of electors under the general election laws of the state, and is the owner of

taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district. Within four (4) days after such election the vote shall be canvassed by the board of commissioners. If a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed water district shall be in favor of organizing such county water district, said board of each such county shall by an order entered on its minutes declare the territory enclosed within the proposed boundaries duly organized as a county water district under the name theretofore designated, and the county clerk of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county or counties in which such district is situated, each, a certificate stating that such a proposition was adopted. Upon the receipt of such last-mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate reciting that the county water district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county or counties in which such county water district is situated. From and after the date of such certificate, the district named therein shall be deemed incorporated as a county water district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor of said proposition the organization fails but without prejudice to renewing proceedings at any time in the future.

History: En. Sec. 5, Ch. 242, L. 1957; amd. Sec. 4, Ch. 167, L. 1965.

Amendment

The 1965 amendment inserted "of each county in which said district lies" after "board of commissioners" in the fourth sentence; substituted "every county in which said district lies" for "said county" at the end of the fifth sentence; inserted "located within the county in which he

proposes to vote and" after "owner of taxable real property" in the ninth sentence; inserted "of each county" or "of each such county" after "unincorporated territory," after "said board," and after "county clerk," all in the eleventh sentence; and inserted "or counties" after "county recorder of the county" in the eleventh sentence and after "county clerk of the county" in the thirteenth sentence.

16-4506. Election of directors—term of office. At an election to be held within such district under the provisions of this act and the laws governing general elections not inconsistent herewith, the county water district thus organized shall proceed within ninety (90) days after its formation to the election of a board of directors consisting, if there are no municipalities within the boundaries of said district, of five (5) members. In all cases where the boundaries of such water district include any municipality or municipalities, said board of directors, in addition to said five (5) directors to be elected as aforesaid, shall consist of one (1) additional director for each one of said municipalities within such county water district, each such additional director to be appointed by the mayor of the municipality for which said additional director is allowed; and if there be any unincorporated territory within said water district, one additional director, to be appointed by the board of commissioners of each county containing such territory. Any director so elected or appointed shall be a

qualified freeholder and a resident of said district. All directors, elected or appointed, shall hold office until the election and qualification or appointment and qualification of their successors. The term of office of directors elected under the provisions of this act shall be four (4) years from and after the date of their election; provided, that the directors first elected after the passage of this act shall hold office only until the election and qualification of their successors as hereinafter provided. The term of office of directors appointed by said mayor or mayors or by said board of commissioners shall be six (6) years from and after the date of appointment. Directors to be first appointed under the provisions of this act shall be appointed within ninety (90) days after the formation of the district. The election of directors of such county water district shall be in every fourth year after its organization, on the fourth Tuesday in March, and shall be known as the "general water district election." All other elections which may be held by authority of this act, or of the general laws, shall be known as special water district election.

History: En. Sec. 6, Ch. 242, L. 1957; amd. Sec. 5, Ch. 167, L. 1965.

Amendment

The 1965 amendment substituted "the

board of commissioners of each county containing such territory" for "the said board of commissioners" at the end of the second sentence; and made another minor change in the second sentence.

16-4507. Nomination of officers. (1) The mode of nomination and election of all elective officers of such water district to be voted for at any water district election and the mode of appointment of a director or directors by said mayor or mayors or by said board of commissioners shall be as follows and not otherwise.

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.

(3) The petition of nomination shall consist of not less than twenty-five (25) individual certificates, which shall read substantially as follows:

PETITION OF NOMINATION

Individual Certificate.

State of Montana

County of _____

} ss.

Prect. No. _____

I, the undersigned, certify that I do hereby join in a petition for the nomination of _____, whose residence is at _____ for the office of _____ of the _____ county water district to be voted for at the water district election to be held in the _____ county water district on the _____ day of _____, 19__; and I further certify that I am a qualified elector and freeholder residing within said district, and am not at this time a signer of any other petition nominating any other candidate for the above named office; or, in case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No.

_____ street, _____, and that my occupation is _____.

(Signed) _____

State of _____

County of _____

} ss.

_____, being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed) _____

Subscribed and sworn to before me this _____ day of _____ 19____.

Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to _____, at _____, Montana.

(4) Clerk to furnish forms. It shall be the duty of the county clerk to furnish upon application a reasonable number of forms of individual certificates of the above character. If the district lies in more than one county, the county clerk whose county contains the largest percentage of the territory of said district shall fulfill this function.

(5) Certificates. Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector residing within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, or, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

(6) Presentation of petition. A petition of nomination, consisting of not less than twenty-five (25) individual certificates for any one candidate, may be presented to the county clerk not earlier than forty-five (45) days nor later than thirty (30) days before the election. The county clerk shall endorse thereon the date upon which the petition was presented to him. If the district lies in more than one county, such petition for nomination shall be presented to the county clerk whose county contains the largest percentage of the territory of said district and said county clerk shall fulfill all duties assigned to county clerks in elections under this act.

(7) Examination of petition. When a petition of nomination is presented for filing to the county clerk, he shall forthwith examine the same, and ascertain whether or not it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing

designate on said petition the defect or omission or reason why such petition can not be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk as in the first instance. The clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the board of commissioners shall provide extra help to enable the clerk to perform satisfactorily and promptly the duties imposed by this section.

(8) Signer may withdraw name. Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county clerk a verified revocation of his signature before the filing of his petition by the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

(9) Candidate may withdraw. Any person whose name has been presented under this section as a candidate may, not later than twenty-five (25) days before the day of election, cause his name to be withdrawn from nomination by filing with the county clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than twenty-five (25) days prior to such election.

(10) Petition filed. If either the original or amended petition of nomination be found sufficiently signed as hereinbefore provided, the clerk shall file the same twenty-five (25) days before the date of the election. When a petition of nomination shall have been filed by the clerk it shall not be withdrawn or added to and no signatures shall be revoked thereafter.

(11) Petitions preserved. The county clerk shall preserve in his office for a period of two years, all petitions of nomination and all certificates belonging thereto, filed under this section.

(12) List of candidates. Immediately after such petitions are filed, the county clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty (20) days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of commissioners of each county in which the district lies shall cause said certified list of names and the offices to be filled, to be published in the proclamation calling the election at least ten (10) successive days before the election in at least one (1) but not more than three (3) newspapers of general circulation published in each county in which such municipal water district is located. Such proclamation shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

(13) Ballots. Form. The county clerk shall cause the ballots to be printed and bound and numbered as provided by said general state law, except as otherwise required in this act. The ballots shall contain

the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

GENERAL (OR SPECIAL) DISTRICT ELECTION

----- County Water District,
(Inserting date thereof.)

Instructions to Voters: To vote, stamp or write a cross (X) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the inspector of election, and obtain another.

(14) How printed. All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right-hand side for questions to be voted upon at municipal water district election, as provided for under this act. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

(15) No candidate omitted. The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided shall be omitted from the ballot.

(16) Office. The offices to be filled shall be arranged in the following order: "For director vote for (giving number)."

(17) Voting squares. Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

(18) Spaces below printed names. Half-inch spaces shall be left below the printed names of candidates for each office, equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

(19) Votes necessary to elect. In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office, shall be declared elected; in case there are two or more persons to be elected to an office, as that of director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected.

(20) Failure to qualify. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as herein-after provided.

(21) Mode of appointment by mayor. The mode of appointment of director or directors by a mayor, or by a board of commissioners, shall be by certificate of appointment signed by said mayor or mayors, or issued by said board of commissioners, and transmitted to the board of directors of said county water district.

(22) Informality not to invalidate. No informality in conducting county water district elections shall invalidate the same, if they have been conducted by directors to fill a vacancy, or appointed by a mayor or by this act.

History: En. Sec. 7, Ch. 242, L. 1957; amd. Sec. 6, Ch. 167, L. 1965.

Amendment

The 1965 amendment added the second sentence to subsection (4); added the third sentence to subsection (6); inserted

"of each county in which the district lies" after "board of commissioners" in the first sentence of subsection (12); substituted "each county" for "the county" near the end of the first sentence of subsection (12); and made a minor change in subsection (5).

16-4508. General law to govern. The provisions of the law relating to the qualifications of electors, the manner of voting, the duties of election officers, the canvassing of returns, and all other particulars in respect to the management of general elections, so far as they may be applicable, shall govern all water district elections, except as in this act otherwise provided; provided, however, that where a corporation owns taxable real property within the boundaries of the district, the president, vice-president or secretary of such corporation shall be entitled to cast a vote on behalf of the corporation; provided also that an elector owning taxable real property within the district need not reside within the district in order to vote, and provided that the board of commissioners shall canvass the returns of the first election and that thereafter, except as herein provided, the board of directors shall meet as a canvassing board and duly canvass the returns within four (4) days after any water district election, including any water district bond election. If the district lies in more than one county, the board of commissioners whose county contains the largest percentage of the territory of said district shall canvass the returns of the first election.

History: En. Sec. 8, Ch. 242, L. 1957; amd. Sec. 1, Ch. 258, L. 1959; amd. Sec. 7, Ch. 167, L. 1965.

Amendments

The 1959 amendment added the first two provisos to this section.

The 1965 amendment added the final sentence.

16-4509. Officers subject to recall. Every incumbent of an elective office, whether elected by popular vote for a full term, or elected by the board of directors to fill a vacancy, or appointed by a mayor or by said board of commissioners for a full term, is subject to recall by the voters of any county water district organized under the provisions of this act, in accordance with the recall provisions of sections 11-3220 to 11-3227, Revised Codes of Montana, both inclusive, applicable to officers under the commissioner-manager plan.

History: En. Sec. 9, Ch. 242, L. 1957.

16-4510. Organization of board. The board of directors shall be the governing body of such county water district. It shall hold its first meeting on the sixth Monday after the first general election for the election of directors as herein provided; it shall choose one of its members president, and shall thereupon provide for the time and place of holding its meetings and the manner in which its special meetings may

be called. All legislative sessions of the board of directors whether regular or special shall be open to the public. A majority of the board of directors shall constitute a quorum for the transaction of business. The board of directors shall establish rules for its proceedings.

History: En. Sec. 10, Ch. 242, L. 1957.

16-4511. Ordinances—enacting clause—compensation. The board of directors shall act only by ordinance or resolution. The ayes and noes shall be taken upon the passage of all ordinances or resolutions and entered upon the journal of the proceedings of the board of directors. No ordinance or resolution shall be passed or become effective without the affirmative votes of at least a majority of the total members of the board. The enacting clause of all ordinances passed by the board shall be in these words: "Be it ordained by the board of directors of _____ county water district as follows:" All resolutions and ordinances shall be signed by the president of the board of directors and attested by the secretary. Each of the members of the board of directors shall receive for each attendance at the meetings of the board ten dollars (\$10.00), and shall receive no other compensation. No director, however, shall receive pay for more than three (3) meetings in any calendar month. Any vacancy in the board of directors, whether the vacant office is elective or appointive, shall be filled by the remaining directors.

History: En. Sec. 11, Ch. 242, L. 1957.

16-4512. General manager, secretary and auditor. The board of directors shall at its first meeting, or as soon thereafter as practicable, appoint, by a majority vote, a general manager, a secretary, and an auditor. No director shall be eligible to the office of general manager, secretary, or auditor. The general manager, secretary, and auditor, shall receive such compensation as the board of directors shall determine, and each shall serve at the pleasure of the board.

History: En. Sec. 12, Ch. 242, L. 1957.

16-4513. Informality not to invalidate. No informality in any proceeding or informality in the conduct of any election, not substantially affecting adversely the legal rights of any citizen, shall be held to invalidate the incorporation of any county water district, and any proceeding wherein the validity of such incorporation is denied shall be commenced within three (3) months from the date of the certificate of incorporation, otherwise said incorporation and the legal existence of said county water district, and all proceedings in respect thereto, shall be held to be valid and in every respect legal and incontestable.

History: En. Sec. 13, Ch. 242, L. 1957.

16-4514. Powers of district. Any county water district incorporated as herein provided shall have power:

- (1) To have perpetual succession;
- (2) Sue and be sued. To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals of competent jurisdiction;

(3) Adopt seal. To adopt a seal and alter it at pleasure;

(4) Hold property. To take by grant, purchase, gift, devise, or lease; to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the district, necessary to the full exercise of its powers;

(5) Acquire water-works. To construct, purchase, lease, or otherwise acquire, and to operate and maintain water-rights, water-works, canals, conduits, reservoirs, lands and rights useful or necessary to store, conserve, supply, produce, or convey water for household, domestic or other similar purposes for the benefit of the district;

(6) Store water. To store water for the benefit of the district; to conserve water for future use; to appropriate, acquire and conserve water and water-rights for the purposes of the district; to commence, maintain, intervene in and compromise, in the name of the district, and to assume the costs of any action or proceeding involving or affecting the ownership or use of waters or water-rights within the district used or useful for any purpose of the district or a benefit to any land situated therein; to commence, maintain, intervene in, defend and compromise actions and proceedings to prevent interference with or diminution of the natural flow of any stream or natural subterranean supply of waters used or useful for any purpose of the district or a common benefit to the lands within the district or its inhabitants; and to commence, maintain and defend actions and proceedings to prevent any such interference with the aforesaid waters as may endanger the inhabitants or lands of the district;

(7) Lease water-works. To lease of and from any person, firm, or public or private corporation with the privilege of purchase, or otherwise, existing water-rights, water-works, canals or reservoir systems; and to carry on and maintain the same; also to sell water, or the use thereof, for household or domestic use or other similar purposes; and whenever there is a surplus of water to sell or otherwise dispose of the same, to municipalities or towns or to consumers located within or without the boundaries of the district;

(8) Cooperate with United States. To cooperate and contract with the United States under the Federal Reclamation Act of June 17, 1902 and all acts amendatory thereof and supplementary thereto or any other act of Congress authorizing or permitting such cooperation or contract for purposes of construction of works necessary or appropriate for the purposes of the district or for the acquisition, purchase, extension, operation, or maintenance of such works, or for a water supply or for the assumption as principal or guarantor of indebtedness to the United States and to carry out and perform the terms of any contract so made;

(9) Borrow money. To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness; also to refund or retire any indebtedness or lien that may exist against the district or property thereof;

(10) Levy taxes. To cause taxes to be levied in the manner pro-

vided for herein for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided;

(11) Make contracts. To make contracts, to employ labor and to do all acts necessary for the full exercise of the foregoing powers.

History: En. Sec. 14, Ch. 242, L. 1957.

16-4515. Powers exercised by board. The powers herein enumerated shall, except as herein otherwise provided, be exercised by the board of directors above provided for and elected and appointed as described herein.

History: En. Sec. 15, Ch. 242, L. 1957.

16-4516. Duties of officers of board—depository of funds—officers' bonds. The president shall sign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The secretary shall countersign all contracts on behalf of the district and perform such other duties as may be imposed by the board of directors. The general manager shall have full charge and control of the maintenance, operation and construction of the water-works or water-works system of said water district, with full power and authority to employ and discharge all employees and assistants at pleasure, prescribe their duties, and shall, subject to the approval of the board of directors, fix their compensation. The general manager shall perform such other duties as may be imposed upon him by the board of directors. The general manager shall report to the board of directors in accordance with such rules and regulations as they may adopt. The auditor shall be charged with the duty of installing and maintaining a system of auditing and accounting that shall completely and at all times show the financial condition of the district. He shall draw warrants to pay demands made against the district when such demands have been first approved by at least three (3) members of the board of directors and by the general manager. The board of directors shall also designate a depository or depositaries to have the custody of the funds of the district, all of which depositaries shall give security sufficient to secure the district against possible loss, and who shall pay the warrants drawn by the auditor for demands against the district under such rules as the directors may prescribe. The general manager, secretary and auditor, and all other employees or assistants of said district who may be required so to do by the board of directors, shall give bonds to the district conditioned for the faithful performance of their duties as the board of directors from time to time may provide.

History: En. Sec. 16, Ch. 242, L. 1957.

16-4517. Bonded indebtedness. Whenever the board of directors deem it necessary for the district to incur a bonded indebtedness, it shall by a resolution so declare and state the purpose for which the proposed debt is to be incurred, the land within the district to be benefited thereby, the amount of debt to be incurred, the maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed forty (40) years, and the maximum rate of interest to be paid, which shall not ex-

ceed seven per cent (7%) per annum, and the proposition to be submitted to the electors.

History: En. Sec. 17, Ch. 242, L. 1957.

16-4518. Election. The board of directors shall fix a date upon which an election shall be held for the purpose of authorizing said bonded indebtedness to be incurred. It shall be the duty of the board of directors to provide for holding such special election on the day so fixed, in accordance with the general election laws of the state, so far as the same shall be applicable, except as herein otherwise provided.

History: En. Sec. 18, Ch. 242, L. 1957.

16-4519. Notice. Such board of directors shall give notice of the holding of such election, which notice shall contain the resolution adopted by the board of directors of the water district, boundaries of voting precincts, which shall include therein only the lands to be benefited, as stated in such resolution, the location of polling places, and the names of the officers selected to conduct the election, who shall consist of one judge, one inspector and two clerks in each precinct.

History: En. Sec. 19, Ch. 242, L. 1957.

16-4520. Publication. Such notice shall be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published in each county wherein such water district is located, which newspaper or newspapers shall be designated by the board of directors. Every qualified elector, owning taxable real property, within such voting precincts, but no others, shall be entitled to vote at such election. All the expenses of holding such election shall be borne by the district.

History: En. Sec. 20, Ch. 242, L. 1957; amd. Sec. 2, Ch. 258, L. 1959; amd. Sec. 8, Ch. 167, L. 1965.

Amendments

The 1959 amendment substituted "in the county wherein such water district is located" for "in such water district"; deleted a provision which read "and if there is no newspaper printed in such

water district, then in some newspaper of general circulation published in the county in which the district is situated" and substituted "owning taxable real property" for "residing."

The 1965 amendment substituted "each county" for "the county" after "newspaper published in" in the first sentence; and inserted "or newspapers" near the end of the first sentence.

16-4521. Canvass of returns. The returns of such election shall be made to and the votes canvassed by said board of directors on the first Monday following said election, and the results thereof ascertained and declared in accordance with the general election laws of the state, so far as they may be applicable, except as herein otherwise provided. The secretary of the board of directors, as soon as the result is declared, shall enter in the records of such board a statement of such results. No irregularities or informalities in conducting such election shall invalidate the same, if the election shall have otherwise been fairly conducted. In all respects not otherwise provided for herein, said election shall be called, managed and directed as is by law provided for general elections in this state applicable thereto, except as herein otherwise provided.

History: En. Sec. 21, Ch. 242, L. 1957.

16-4522. Two-thirds vote necessary. If from such returns it appears that more than two-thirds of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as it may deem to be to the public interest.

History: En. Sec. 22, Ch. 242, L. 1957.

16-4523. Value of bonds issued. Any bonds issued by any district organized under the provisions of this act are hereby given the same force, value and use as bonds issued by any municipality and shall be exempt from all taxation within the state of Montana.

History: En. Sec. 23, Ch. 242, L. 1957.

16-4524. Power to construct works across streets, etc.—right of way through state lands. The board of directors shall have power to construct works across any stream of water, watercourse, street, avenue, highway, railway, canal, ditch or flume which the route of said works may intersect or cross; provided, such works are constructed in such manner as to afford security for life and property, and said board of directors shall restore the crossings and intersections to their former state as near as may be, or in manner not to have impaired unnecessarily their usefulness. The right of way is hereby given, dedicated and set apart to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state, and to have the same rights and privileges appertaining thereto as have been or may be granted to the municipalities within the state.

History: En. Sec. 24, Ch. 242, L. 1957.

16-4525. Water rates. The board of directors shall fix all water rates, and shall through the general manager collect the charges for the sale and distribution of water to all users.

History: En. Sec. 25, Ch. 242, L. 1957.

16-4526. Rate to pay operating expenses. The board of directors in the furnishing of water shall fix such rate as will pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by it, pay the interest on any bonded debt, and, so far as possible, provide a sinking or other fund for the payment of the principal of such debt as it may become due; it being the intention of this section to require the district to pay the interest and principal of its bonded debt from the revenues of the district.

History: En. Sec. 26, Ch. 242, L. 1957.

16-4527. Commissioners to levy water taxes. If, from any cause, the revenues of the district shall be inadequate to pay the interest or principal of any bonded debt as it becomes due or any other expenses or claims against the district, then the board of directors must, at least fifteen (15) days before the first day of the month in which the board of commissioners

of the county, or city and county, or counties in which such water district is located, are required by law to levy the amount of taxes required for county or city and county purposes, furnish to the board or boards of commissioners, and to the auditor or auditors, respectively, an estimate in writing of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due, and of the amount of money required to establish reasonable reserve funds for either of said purposes, together with a description of the lands benefited thereby, as stated by the board of directors in the resolution declaring the necessity to incur such bonded indebtedness, and also of the amount of money required by the district for any other purpose in this section set forth, and the board of commissioners of such county or city and county must annually, at the time and in the manner of levying other county or city and county taxes and until any such bonded debt is fully paid, levy upon the lands so benefited and cause to be collected, the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof to be known as the "----- county water district bond tax"; and until all other expenses or claims are fully paid, levy upon all of the lands of the district and cause to be collected the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof to be known as the "----- county water district water tax."

When the amount of money required for any purpose in this section enumerated has been determined, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its area bears to the total area of all of the lands to be assessed; or said assessment may, at the option of the board or boards of county commissioners, be based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said district, in which case, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed. PROVIDED HOWEVER that where the district lies in more than one county, the same method of assessment shall be used by each board of county commissioners.

When the written estimate of the amount of money required has been delivered to the board of commissioners, said board shall give notice of its intention to levy and collect a tax sufficient for the payment thereof. Such notice shall be given:

(1) By posting notice thereof in five (5) public places within the county and within the boundaries of the lands upon which the tax is to be levied, and

(2) By publishing a copy of the notice for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published in each county wherein the district is located.

(3) By forwarding regular first class mail or registered mail, at least ten (10) days prior to the hearing provided for in paragraph (d) of this

section, a copy of the notice addressed to the owners of taxable real property within the district as shown by the current assessment book on file in the office of the assessor of the county or counties the boundaries of which include taxable real property of the district.

The legislative assembly hereby finds, determines and declares that the giving of notice in accordance with paragraphs (1), (2) and (3) of this section is reasonably calculated to inform the owners of taxable real property located within the boundaries of the district of the hearing provided for in paragraph (d) of this section, and that the giving of any further notice is impracticable and is unnecessary to the assurance of due process of law to such property owners.

Such notice shall state:

- (a) The amount of money required;
- (b) The method of assessment which the board or boards of commissioners intends to employ;
- (c) The boundaries or description of the lands to be assessed, which said boundaries or description may be recited in full, or may be given by reference to any instrument on file or of record in the office of the clerk and recorder, treasurer or assessor of the county or counties in which the district or part thereof is situate; and
- (d) The time when and the place where, the board or boards of commissioners will hear and pass upon all protests that may be made against the levy of the tax or any matter pertaining thereto, which said hearing shall be had no less than fifteen (15) days after the last publication of the notice.

At the time and place designated for said hearing any owner of property situated within the area to be assessed may appear and protest the levy of the tax or any matter pertaining thereto. All protests must be heard, considered and ruled upon by the board of commissioners. The board of commissioners may adjourn said hearing from time to time.

Where such tax is, for any reason, deemed unlawful by the person whose property is taxed, whether he has protested the same at the hearing above provided or not, he may pay the tax or the installments thereof under protest in the manner provided by section 84-4502, Revised Codes of Montana, 1947, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to recover such tax, or installments, and in such action contest and litigate the payment of such tax on the same grounds and for the same reasons that he has stated in his written protest, and for no other reasons and on no other grounds; provided, that all of the provisions of said section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

History: En. Sec. 27, Ch. 242, L. 1957; amd. Sec. 3, Ch. 258, L. 1959; amd. Sec. 1, Ch. 46, L. 1961; amd. Sec. 1, Ch. 68, L. 1963; amd. Sec. 9, Ch. 167, L. 1965.

Amendments

The 1959 amendment, in the second paragraph, deleted a phrase "where the

water district is located more than one (1) mile from the boundary of an incorporated city or town" which appeared after the words "total area of all of the lands to be assessed; or"; substituted "taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of im-

provements thereon, within said district" for "the assessed value of the lots or parcels of land within said district" and added all the remaining portion of this section.

The 1961 amendment deleted the word "minimum" before "amount of money required" in two places in the first paragraph, near the beginning of the second paragraph, and near the beginning of the third paragraph; inserted the words "and of the amount of money required to establish reasonable reserve funds for either of said purposes" near the middle of the first paragraph; and made a minor change in phraseology in the first paragraph.

The 1963 amendment inserted "regular first class mail or" near the beginning of clause (3); and added to clause (c) all of the language beginning with "which said boundaries."

The 1965 amendment inserted "or counties" before "in which such water district is located" in the first paragraph; made a minor grammatical change in the first paragraph; inserted "or boards" in the phrase "board of commissioners" in the first paragraph, in the first sentence of the second paragraph, and in paragraphs (b) and (d); inserted "or auditors" after "auditor" in the first paragraph; inserted "the proportionate share to be borne by the land located in their county of" before "a tax sufficient for the payment thereof" in two places in the latter part of the first paragraph; added the proviso appearing at the end of the second paragraph; inserted "within the county and" after "public places" in paragraph (1); and substituted "each county" for "the county" near the end of paragraph (2).

Separability Clauses

Section 5 of Ch. 258, Laws 1959 and Sec. 3 of Ch. 46, Laws 1961 read "If any provision contained in this act shall for any reason be held invalid, such decision shall not invalidate the remaining portions of this law."

Section 2 of Ch. 68, Laws 1963 read "If any section, paragraph, sentence, clause or provision of this act shall for any reason be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, paragraphs, sentences, clauses or provisions of this act."

Repealing Clauses

Section 4 of Ch. 258, Laws 1959 and Sec. 2 of Ch. 46, Laws 1961 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 68, Laws 1963 read "All acts, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act, or part thereof, heretofore repealed."

Effective Dates

Section 6 of Ch. 258, Laws 1959 provided the act should be in effect from and after the date of passage and approval. Approved March 13, 1959.

Section 4 of Ch. 46, Laws 1961 provided the act should be in effect from and after its passage and approval. Approved February 23, 1961.

Section 4 of Ch. 68, Laws 1963 provided the act should be in full force and effect from and after the date of passage and approval. Approved February 25, 1963.

Constitutionality

This section is not unconstitutional because it delegates to a corporation the power to tax for the general health, safety, and welfare of property owners without regard to benefits to the property so taxed in violation of Const., Art. V, sec. 36. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 331.

The owners of land, which had been included in a county water district organized in August 1958 under Laws 1957, ch. 242 (16-4501 to 16-4534) were not deprived of due process because no adequate notice was given of the hearing to create the district since the inclusion of land in the improvement district was not a taking of property. Rights of the owners were not affected until the levy of assessment in August 1960, at which time the provisions of this section were such as to afford them due process. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 335.

The manner of assessing property under this section on an area basis does not violate the fourteenth amendment to the federal constitution where under such method the property assessed would be enhanced to the extent of the burden imposed. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 336.

16-4528. Levy and collection of tax. Such taxes for the payment of any such bonded debt shall be levied on the property benefited thereby, as stated by the board of directors in the resolution declaring the necessity therefor, and all taxes for other purposes shall be levied on all property in the territory comprising the district. All such taxes shall be collected at the same time and in the same manner and form as county taxes are collected,

and when collected shall be paid to the district for which such taxes were levied and collected. If such taxes are levied for the payment of a bonded debt for the benefit of certain property within the district, as so stated in the resolution of the board of directors aforesaid, such taxes shall be a lien upon each lot or parcel of said property to the extent of the levy of said taxes upon said lot or parcel; and all taxes for other purposes shall be a lien upon each lot or parcel of land within the entire area comprising the district, to the extent of the levy of said taxes upon said lot or parcel; and said taxes, whether for the payment of a bonded indebtedness or for other purposes, shall be of the same force and effect as other liens for taxes, and their collection shall be enforced by the same means as provided for in the enforcement of liens for state and county taxes. Such taxes if not paid shall become delinquent at the same time as do county taxes.

History: En. Sec. 28, Ch. 242, L. 1957; amd. Sec. 1, Ch. 45, L. 1959.

Amendment

The 1959 amendment substituted the first part of the third sentence for one which formerly read: "Such taxes, if for the payment of a bonded debt, shall be a lien on all the property benefited thereby, as so stated in the resolution of

the board of directors aforesaid, and all taxes for other purposes shall be a lien on all the property in the territory comprising the district"; and added the last sentence.

Repealing Clause

Section 2 of Ch. 45, Laws 1959 repealed all acts and parts of acts in conflict therewith.

16-4529. Initiative. Ordinances may be passed by the electors of any county water district organized under the provisions of this act in accordance with the methods provided by the general laws of the state for direct legislation applicable to cities and towns.

History: En. Sec. 29, Ch. 242, L. 1957.

16-4530. Referendum. Ordinances may be disapproved and thereby vetoed by the electors of any such county water district by proceeding in accordance with the methods provided by the general laws of the state for protesting against legislation by cities and towns.

History: En. Sec. 30, Ch. 242, L. 1957.

16-4531. Adding to and consolidation of district. Any portion of any county or any municipality, or both, may be added to any county water district organized under the provisions of this act, at any time, upon petition presented in the manner therein provided for the organization of such water district, which petition may be granted by ordinance of the board of directors of such water district. Such ordinance shall be submitted for adoption or rejection to the vote of the electors in such water district and in the proposed addition, at a general or special election held as herein provided, within seventy (70) days after the adoption of such ordinance. If such ordinance is approved, the president and secretary of the board of directors shall certify that fact to the secretary of state and to the county recorder of the county in which such water district is located. Upon the receipt of such last mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate, reciting the passage of said ordinance and the addition of said territory to said district. A copy

of such certificate shall be transmitted to and filed with the county clerk of the county in which such county water district is situated. From and after the date of such certificate the territory named therein shall be deemed added to and form a part of said county water district, with all the rights, privileges and powers set forth in this act and necessarily incident thereto.

Two or more water districts organized under the provisions of this act may consolidate, at any time, upon petitions submitted to the board of directors of each such water district. Such petitions shall be in the form required for petitions for the organization of water districts. Each such petition shall be signed by not less than ten per cent (10 %) of the registered voters of the territory included within said water district. Said petitions may be granted by ordinance of the board of directors of each of said water districts. Such ordinances shall be submitted for adoption or rejection to the vote of the electors in such water districts at general or special elections held as herein provided within seventy (70) days after the adoption of such ordinances. If such ordinances are approved, the president and secretary of the boards of directors of each of said water districts shall certify that fact to the secretary of state and to the county clerk of the county or counties in which such water districts are located. Upon the receipt of said certificate the secretary of state shall, within ten (10) days, issue his certificate, reciting the passage of said ordinances and the consolidation of said districts. A copy of such certificate shall be transmitted to and filed with the county clerk of each county in which such consolidated water district is situated. From and after the date of such certificate, the said districts shall be deemed to be consolidated and shall consist of one water district with all the rights, privileges and powers set forth in this act and necessarily incident thereto. The number and manner of selection and election of directors of the consolidated water district shall be the same as the number and manner of selection and election of directors of newly organized water districts.

History: En. Sec. 31, Ch. 242, L. 1957;
amd. Sec. 10, Ch. 167, L. 1965.

county" for "a county" near the beginning of the section; and added the second paragraph.

Amendment

The 1965 amendment substituted "any

16-4532. Definitions. Nothing in this act shall be so construed as repealing or in any wise modifying the provisions of any other act relating to water or the supply of water to, or the acquisition thereof by counties or municipalities within this state. The term "municipality," as used in this act, shall include a consolidated city and county, city or town, and shall be understood and so construed as to include, and is hereby declared to include, all corporations heretofore organized and now existing and those hereafter organized for municipal purposes within such water districts. The term "county" shall mean one or more counties and shall be understood and construed to include "city and county." In municipalities in which there is no mayor the duty imposed upon said officer by the provisions of this act shall be performed by the president of the board of trustees or other chief executive of the municipality. The

word "district" shall apply, unless otherwise expressed or used, to a water district formed under the provisions of this act, and the word "board" and the words "boards of directors" shall apply to the board of directors of such district.

History: En. Sec. 32, Ch. 242, L. 1957; Amendment
amd. Sec. 11, Ch. 167, L. 1965.

The 1965 amendment inserted "shall mean one or more counties and" in the third sentence.

16-4533. Exclusion of territory—petition—contents—duties of secretary—hearing—order excluding lands. Any territory, included within any county water district formed under the provisions of this act, and not benefited in any manner by such district, or its continued inclusion therein, may be excluded therefrom by order of the board of directors of such district upon the verified petition of the owner or owners in fee of lands whose assessed value, with improvements, is in excess of one-half of the assessed value of all the lands, with improvements, held in private ownership in such territory. Said petition shall describe the territory sought to be excluded and shall set forth that such territory is not benefited in any manner by said county water district or its continued inclusion therein, and shall pray that such territory may be excluded and taken from said district. Such petition shall be filed with the secretary of the water district and shall be accompanied by a deposit with such secretary of the sum of one hundred dollars (\$100.00), to meet the expenses of advertising and other costs incident to the proceedings for the exclusion of such territory, including the cost of recording a certified copy of the order hereinafter provided for, any unconsumed balance to be returned to the petitioner. Upon the filing of such petition with the secretary of the water district he shall call a meeting of the board of directors of the district at a time not less than twenty-five (25) days nor more than fifty (50) days after the filing of the petition and cause a notice of the filing of such petition to be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper within said district, if there be one, and if not, in some newspaper of general circulation published in each county in which the district is situated. Such notice shall also state the date of the filing of such petition and that the same will come on for hearing before the board of directors of the district and shall state the time of the hearing and the place thereof, which shall be the regular meeting place of the board of directors of the district; provided, that the board may adjourn the hearing to a more convenient meeting place within the district. Any landowner or taxpayer within the district shall have the right to appear at said hearing, either in behalf of or in opposition to the granting of said petition. Said petition shall come on for hearing before the board of directors of the district at the time and place specified in the notice of hearing. If upon such hearing the board of directors determines that it is for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, or if it appears that such lands, or some portion thereof, will not be benefited by their continued inclusion in the district, then the board of directors shall make an order that such lands,

or such portion thereof, be excluded from the district, such order to describe specifically the lands so excluded. From the time of the making of such order the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded. A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county or counties in which the district is situated and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby.

History: En. Sec. 33, Ch. 242, L. 1957;
amd. Sec. 12, Ch. 167, L. 1965.

Effective Date

Section 13 of Ch. 167, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

Amendment

The 1965 amendment substituted "each county" for "the county" near the end of the fourth sentence; and inserted "or counties" after "recorder of the county" in the final sentence.

16-4534. Directors may institute proceedings for exclusion—hearing—referendum. The board of directors of any county water district formed under the provisions of this act may itself initiate the proceedings for the exclusion from the district of any land or lands which it may not be for the best interests of the district to be included, or which may not be benefited in any manner by their continued inclusion therein. Such proceedings shall be initiated by the board of directors by the passage of a resolution requiring all persons interested to appear and show cause before the board of directors, at a time and place specified, why such lands, describing them, should not be excluded from the district and fixing a time and place for such hearing and directing the secretary of the district to give notice of the passage of such resolution and of such hearing. Upon the passage of such resolution the secretary of the district shall give notice thereof and of the time and place of such hearing in the manner hereinbefore prescribed for notice of hearing upon petition by a landowner or landowners, and thereafter all proceedings shall be had in the manner and with the effect herein provided for proceedings upon a petition by a landowner or landowners. The time of hearing fixed by the board of directors by its resolution hereinbefore mentioned shall be not less than twenty-five (25) days nor more than fifty (50) days after the passage of such resolution and the place of hearing so fixed shall be a convenient place within the district; provided that the final action of the board of directors under this section shall be subject to the referendum by the electors of the water district according to section 30 [16-4530] of this act.

History: En. Sec. 34, Ch. 242, L. 1957.

deemed to affect any other section or part hereof."

Separability Clause

Section 35 of Ch. 242, Laws 1957 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be

Effective Date

Section 36 of Ch. 242, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

CHAPTER 46—DOG LICENSING

- Section 16-4601. Collar and license tag required.
 16-4602. County commissioners may issue licenses—license year—application for license—application for kennel license.
 16-4603. Fees—kennel license tags—use.
 16-4604. Municipal license tag as compliance with act.
 16-4605. Seizure and impounding of dogs running at large without tag.
 16-4606. County commissioners to provide for impounding and disposition of dogs.
 16-4607. County pound master—appointment—authority for contracts with humane societies or municipal corporations.
 16-4608. Impounded dogs—disposition—dogs suspected of rabies or known to have bitten human or animal.
 16-4609. Fee for impounding and keeping dog.
 16-4610. Fees and charges as charge against county—payment by owner claiming dog.
 16-4611. Failure of owner to pay pound fee constitutes abandonment.
 16-4612. Disposition of license fees and fines.
 16-4613. Violation constitutes misdemeanor.
 16-4614. Liability of owner of dog for damages to livestock or poultry.
 16-4615. "Owner" defined.

16-4601. Collar and license tag required. It shall be unlawful where this act applies for any person to own, harbor or keep any dog over the age of five (5) months, or to permit such a dog owned, harbored or controlled by him to run at large, unless the dog has attached to its neck a substantial collar on which is fastened a license tag issued by the authority of a county or a municipal corporation for the purpose of identifying the dog and designating the owner; provided, however, that it shall be lawful to remove such collar and license tag when such dog is under the immediate control of its owner or his agent.

History: En. Sec. 1, Ch. 280, L. 1959.

Title of Act

An act to protect livestock from injury by dogs; providing that it may be unlawful to keep a dog over the age of five (5) months without an identifying license tag; providing for the issuance of dog license tags and kennel licenses by county treasurers and the fees therefor; providing for the issuance of dog license tags by municipal corporations under the provisions of this act; providing for the impounding of unlicensed dogs running at large by law enforcement officers and a fee therefor; providing that county commissioners may provide for the impounding and disposition of dogs running at large contrary to the provisions of this act, and authorizing them to appoint a county pound master to enforce this act or to enter into contracts with others to perform such duties; providing that impounded dogs shall not be disposed of without notice to the owner, if known, or before seventy-two (72) hours have elapsed after impounding nor, in the case of dogs suspected of rabies, before release by the

county health officer; providing for the fixing of pound fees and charges by the board of county commissioners and the payment thereof from the county treasury or by the owner of such impounded dog; providing that failure of the owner of a dog to pay pound fees and charges after notice of impounding constitutes abandonment of the dog; providing that fees and fines collected under this act shall be paid into the county treasury for the enforcement of this act; providing that violation of this act shall constitute a misdemeanor; providing that the owner of livestock or poultry killed or injured by a dog or dogs may recover damages from the owner or owners thereof and that lack of knowledge of the dog's disposition or whereabouts shall constitute no defense to said action; defining the word "owner" in relation to dogs; providing that if any part of this act is adjudged invalid, inoperative or unconstitutional, such decision shall not affect, impair or invalidate the remaining portions of this act; and providing for the repeal of all acts and parts of acts in conflict herewith.

16-4602. County commissioners may issue licenses—license year—application for license—application for kennel license. The board of

county commissioners of any county in the state of Montana may provide for the annual issuance of serially numbered dog license tags, stamped with the name of the county and the year of issue, which shall be issued by the county treasurer to owners of dogs who make application and pay the dog license fee, or to owners of kennels who make application and pay the kennel license fee. The license year shall commence on the first day of July and end on the thirtieth day of the following June. Each application, except by a kennel owner, shall state the age, sex, color, and breed of the dog for which the license is desired and the address of the owner. An application for a kennel license shall state the name and address of the owner of the kennel. The term "kennel" shall mean any establishment wherein or whereon five (5) or more dogs are kept for the purpose of boarding, breeding, sale, sporting or commercial purposes.

History: En. Sec. 2, Ch. 280, L. 1959.

16-4603. Fees—kennel license tags—use. The county treasurer shall endorse upon the application for a dog license tax the number of the license tag issued. The fee for the issuance of a dog license tag shall be one dollar (\$1.00), but the board of county commissioners may increase the fee to not more than five dollars (\$5.00) if deemed advisable for proper administration of this act. The fee for issuance of a kennel license shall be five dollars (\$5.00), but the board of county commissioners may increase the fee to not more than twenty dollars (\$20.00) if deemed advisable for proper administration of this act. Upon issuance of a kennel license, the county treasurer shall deliver to the applicant ten (10) serially numbered license tags stamped with the name of the county and the year of issue. Such tags shall be made in a form so that they are readily distinguishable from individual license tags for that year. Such tags may be transferred from one dog to another within the kennel. The kennel owner shall retain such license tags when he sells or otherwise disposes of a dog. All applications for dog license tags and kennel licenses, endorsed with the numbers of the license tags issued thereunder, shall be kept on file in the office of the county treasurer open to public inspection.

History: En. Sec. 3, Ch. 280, L. 1959.

16-4604. Municipal license tag as compliance with act. Any dog license tag issued annually by any municipal corporation pursuant to an ordinance which substantially complies with this act and which provides for the wearing of the license tag upon the collar of the dog and the keeping of a record which will establish the identity of the person who owns, keeps or harbors the dog constitutes compliance with the licensing provisions of this act.

History: En. Sec. 4, Ch. 280, L. 1959.

16-4605. Seizure and impounding of dogs running at large without tag. Any dog found running at large without a valid current dog license tag issued by the authority of a county or municipal corporation pursuant to the provisions of this act, may be seized and impounded by any sheriff,

deputy sheriff, policeman, game warden, county pound master or other law enforcement officer.

History: En. Sec. 5, Ch. 280, L. 1959.

16-4606. County commissioners to provide for impounding and disposition of dogs. The board of county commissioners of each county where this act applies shall provide for the taking up and impounding of all dogs found running at large contrary to the provisions of this act and for the killing in some humane manner or other disposition of any dog impounded.

History: En. Sec. 6, Ch. 280, L. 1959.

16-4607. County pound master—appointment—authority for contracts with humane societies or municipal corporations. The board of county commissioners may appoint a county pound master and fix the compensation for his services whose duties shall be to take up, impound and kill dogs under this act, and otherwise enforce the provisions of this act, or the board of county commissioners may enter into a contract with any humane society or other person, organization or association which will undertake to carry out the provisions of this act regarding the taking up, impounding and killing of dogs, and which shall give a proper bond in whatever amount may be fixed by the board of county commissioners for the faithful performance of the contract. The board of county commissioners may also enter into contracts with municipal corporations for the use by the county or by the municipal corporation of the impounding facilities of the other.

History: En. Sec. 7, Ch. 280, L. 1959.

16-4608. Impounded dogs—disposition—dogs suspected of rabies or known to have bitten human or animal. No dog impounded under the provisions of this act shall be killed or otherwise disposed of without notice to the owner, if he is known, and no dog so impounded shall be killed before seventy-two (72) hours have elapsed from the time of the taking up of the dog; provided, however, that any impounded dog suspected of having rabies or known to have bitten any human or animal, shall not be killed or otherwise disposed of until released by the county health officer or his agent.

History: En. Sec. 8, Ch. 280, L. 1959.

16-4609. Fee for impounding and keeping dog. The board of county commissioners shall fix the fee for impounding any dog and the amount to be paid for keeping the dog.

History: En. Sec. 9, Ch. 280, L. 1959.

16-4610. Fees and charges as charge against county—payment by owner claiming dog. The fees and pound charges for taking up and impounding and for keeping the dogs shall be a charge against the county treasury, to be paid as other claims against the county are paid; provided, however, that in any case where a dog so impounded is claimed by the

owner, the fee for impounding and keeping the dog as fixed by the board of county commissioners, shall be paid by the owner to the person, organization or association having custody of the dog, to be retained by him or them, and no charge for fees pertaining to the dog shall be paid by the county.

History: En. Sec. 10, Ch. 280, L. 1959.

16-4611. Failure of owner to pay pound fee constitutes abandonment. The refusal or failure of the owner of any such dog to pay the pound fee and charges after due notification shall be held to be an abandonment of the dog by the owner.

History: En. Sec. 11, Ch. 280, L. 1959.

16-4612. Disposition of license fees and fines. All fees for the issuance of dog license tags, kennel licenses, and all fines collected under the provisions of this act shall be paid into the county treasury and shall be used to pay fees, salaries, costs, expenses, or any or all of them for the enforcement of this act.

History: En. Sec. 12, Ch. 280, L. 1959.

16-4613. Violation constitutes misdemeanor. Violation of any provision of this act shall constitute a misdemeanor.

History: En. Sec. 13, Ch. 280, L. 1959.

16-4614. Liability of owner of dog for damages to livestock or poultry. The owner of livestock or poultry injured or killed by any dog may recover as liquidated damages from the owner of the dog, the actual value of the animals killed or the value of the damages sustained by reason of the injuries as the case may be. If two or more dogs kept by two or more owners or keepers injure or kill any livestock or poultry at the same time, the owners or keepers of the dogs are jointly and severally liable for such damages. It shall be no defense to said action that the owner or keeper of the dog had no knowledge of the dog's whereabouts at or prior to the time when the dog injured or killed livestock or poultry or that the owner or keeper of the dog had no knowledge of the dog's disposition or inclination to worry, kill or injure livestock or poultry.

History: En. Sec. 14, Ch. 280, L. 1959.

16-4615. "Owner" defined. The word "owner" when used in this act in relation to property in or possession of, dogs, shall include every person who owns, harbors or keeps a dog.

History: En. Sec. 15, Ch. 280, L. 1959.

Separability Clause

Section 16 of Ch. 280, Laws 1959 read "If any part of this act shall be adjudged invalid, inoperative or unconstitutional, such decision shall not affect, impair or invalidate any other part of this act."

Repealing Clause

Section 17 of Ch. 280, Laws 1959 repealed all acts or parts of acts in conflict therewith.

CHAPTER 47—ZONING DISTRICTS

- Section 16-4701. Purpose of act—powers of county commissioners.
 16-4702. Recommendations by city-county planning board.
 16-4703. Establishment of districts—regulations for land use—scope—uniformity.
 16-4704. Purposes of regulations—factors considered.
 16-4705. Procedure for adoption of regulations and boundaries.
 16-4706. Board of adjustment—exceptions to regulations—procedure—appeals.
 16-4707. Penalty for violations—enforcement proceedings.
 16-4708. Enforcement officers—location and conformance permits.
 16-4709. Continuation of existing uses.
 16-4710. Natural resources protected.

16-4701. Purpose of act—powers of county commissioners. For the purpose of promoting the health, safety, morals and general welfare of the people in cities and towns and counties whose governing bodies have adopted a comprehensive development plan for jurisdictional areas pursuant to Title 11, Chapter 38, R.C.M. 1947, the board of county commissioners in such counties are authorized to adopt zoning regulations for all or parts of such jurisdictional areas in accordance with the provisions of this act.

History: En. Sec. 1, Ch. 246, L. 1963.

Title of Act

An act to enable boards of county commissioners to designate zoning districts in certain areas lying outside the corporate limits of cities and towns, and to adopt zoning regulations for these zoning districts, and to create zoning commissions and zoning boards of adjustment for these districts, and repealing sections 11-2710, 11-3852, and 11-3854, R.C.M. 1947, and all acts and parts of acts in conflict herewith.

Preamble

Section 1 of Ch. 246, Laws 1963, was preceded by a preamble reading as follows:

WHEREAS, continuing growth and economic development of many cities and towns of this state create urbanized use of lands adjoining and surrounding these cities and towns but beyond their incorporated limits, and

WHEREAS, orderly patterns of use for such lands preserve and increase their value as residential, industrial, agricultural, commercial, recreational or other lands as may be appropriate to their situation, and

WHEREAS, establishment of reasonable patterns of land use and development is more appropriately determined by local consultation and decision than by enactment of the state legislative assembly, and

WHEREAS, the boards of county commissioners are constituted agencies for local administrative decision within policy limits which are determined by the legislative assembly, and

WHEREAS, it is the intention of the legislative assembly that the boards of county commissioners shall exercise the police power of the state for the purpose of establishing and administering zoning districts for certain unincorporated suburban lands of the state within the provisions and limitations of this act.

16-4702. Recommendations by city-county planning board. The board of county commissioners shall require the city-county planning board to act as a zoning commission to recommend boundaries and appropriate regulations for the various zoning districts. The city-county planning board shall make a written report of its recommendations to the board of county commissioners, but such recommendations shall be advisory only.

History: En. Sec. 2, Ch. 246, L. 1963.

16-4703. Establishment of districts—regulations for land use—scope—uniformity. (1) Within the unincorporated portions of a jurisdictional area which has been established under provisions of section 11-3825,

R.C.M. 1947, and which portions are contiguous to a city, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or parts of the jurisdictional area.

(2) Within some such zoning districts it shall be lawful and within others it shall be unlawful to erect, construct, alter or maintain certain buildings, or to carry on certain trades, industries or callings.

(3) Within each district the height and bulk of future buildings and the area of the yards, courts and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

(4) All such regulations shall be uniform for each class or kind of buildings throughout a district, but the regulations in one (1) district may differ from those in other districts.

History: En. Sec. 3, Ch. 246, L. 1963.

16-4704. Purposes of regulations—factors considered. The zoning regulations shall be made in accordance with a comprehensive development plan, and shall be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such zoning regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such jurisdictional area, and the zoning regulations shall, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

History: En. Sec. 4, Ch. 246, L. 1963.

16-4705. Procedure for adoption of regulations and boundaries. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall be published once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

- (a) the boundaries of the proposed district
- (b) the general character of the proposed zoning regulations
- (c) the time and place of the public hearing
- (d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

(2) At the public hearing the board shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

(3) After the public hearing the board shall review the proposals

of the planning board and shall make such revisions or amendments as it may deem proper.

(4) The board may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

(5) The board shall publish notice of passage of the resolution of intention once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district

(b) the general character of the proposed zoning regulations

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder

(d) that for thirty (30) days after first publication of this notice the board will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.

(6) Within thirty (30) days after the expiration of the protest period the board may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if forty (40) percent of the freeholders within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year.

History: En. Sec. 5, Ch. 246, L. 1963.

16-4706. Board of adjustment—exceptions to regulations—procedure—appeals. The board of county commissioners shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act shall provide that the board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this act.

(1) The board of adjustment shall consist of five (5) members, each to be appointed for a term of two (2) years, and removable for cause by the board of county commissioners upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of section 11-2707, R.C.M. 1947.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this act. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board may determine. Such chairman, or in his ab-

sence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

(3) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

(4) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by his attorney.

(5) The board of adjustment shall have the following powers:

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of any resolution adopted pursuant thereto.

To hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution.

To authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done.

(6) In exercising the above mentioned powers, the board of adjustment may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

(7) The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution, or to effect any variation in such resolution.

(8) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the board.

(9) Upon presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the board and on due cause shown, grant a restraining order.

(10) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(11) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(12) Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

History: En. Sec. 6, Ch. 246, L. 1963.

16-4707. Penalty for violations—enforcement proceedings. A violation of this act or any resolution adopted pursuant thereto is hereby declared to be a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars (\$500) or imprisonment in the county jail not exceeding six (6) months, or both.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this act, or of any resolution made under authority conferred hereby, the proper authorities of the county, in addition

to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

History: En. Sec. 7, Ch. 246, L. 1963.

16-4708. Enforcement officers—location and conformance permits. The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions, and may provide for the issuance of location or conformance permits and may collect a fee for each such permit, and the proceeds of such fees shall be deposited in the general fund of the county.

History: En. Sec. 8, Ch. 246, L. 1963.

16-4709. Continuation of existing uses. Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued, although such use does not conform to the provisions of such resolution.

History: En. Sec. 9, Ch. 246, L. 1963.

16-4710. Natural resources protected. No resolution, rule or regulation adopted pursuant to the provisions of this act shall prevent the complete use, development or recovery of any mineral, forest, or agricultural resources by the owner thereof.

History: En. Sec. 10, Ch. 246, L. 1963.

Separability Clause

Section 11 of Ch. 246, Laws 1963 read "The provisions of this act shall be severable and, if any of its sections, provisions, exceptions, clauses or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 12 of Ch. 246, Laws 1963 read "Sections 11-2710, 11-3852 and 11-3854, R.C.M. 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

TITLE 17—DAMAGES AND RELIEF

Chapter 4. Damages for wrongs, 17-410.

12. Alienation of affections—breach of promise to marry, 17-1201 to 17-1206.

CHAPTER 1—RELIEF IN GENERAL

17-102. (8658) Relief in case of forfeiture.

Essential Allegations

In an action involving rights of parties to written contract for sale of property where defendants sought to rescind contract, if the defendants could make out a case under this section, they should be permitted to do so and ought not to forfeit all of the money which they paid. To prevail on this ground they were required to allege and prove a case following within the terms of the statute. *Joy v. Little*, 134 M 82, 328 P 2d 636, 639, 641.

Right to Relief

In action to prohibit defendant from cancelling an agreement for sale of lands even though the deposit in court might be legally insufficient as a tender to defendant, plaintiff might be relieved from forfeiture upon a showing of facts sufficient to appeal to the conscience of a court of equity. *Blackfeet Tribe of the Blackfeet Indian Reservation v. Klies Livestock Co.*, 160 F Supp 131, 133, 141.

When Relief is Improper

Conditional buyers were not entitled to relief from forfeiture of conditional sales contract because of their inability to make payments required by contract due to a wide-spread strike. *Kovacich v. Metals*

Bank & Trust Co., 139 M 449, 365 P 2d 639, 640.

When Relief is Proper

To come within the provisions of this section a party must set forth facts of a forfeiture which will appeal to the conscience of a court of equity. *Kovacich v. Metals Bank & Trust Co.*, 139 M 449, 365 P 2d 639, 640.

Where vendor brought action to recover possession of realty and the notice of forfeiture was ambiguous and attempted to accelerate payment to an amount almost twice that which could be rightfully demanded and the total amount of the forfeiture was twice the rental value of the property, the vendor's notice did not terminate the vendee's rights under the contract and the district court should have granted vendee's motion to dismiss under Rule 41(b), M. R. Civ. P. *Shuey v. Hamilton*, 142 M 83, 381 P 2d 482.

Willful Breach

This section explicitly points out that if the breach is willful there will be no relief from forfeiture and no common-law principle can override this exacting statutory provision. *Joy v. Little*, 138 M 110, 354 P 2d 1035, 1041.

CHAPTER 2—COMPENSATORY RELIEF—DAMAGES—INTEREST—EXEMPLARY DAMAGES

17-201. (8659) Person suffering detriment may recover damages.

Operation and Effect

In an action for damages to an automobile, it was not a condition precedent to recovery that the plaintiff should have first incurred an indebtedness or that he should actually have paid the sum claimed for the repairs. *Hoenstine v. Rose*, 131 M 557, 312 P 2d 514, 517.

Value of Vehicle

Where plaintiff showed the value of damaged vehicle plus the cost of repairs

and defendant failed to overcome the preponderance of evidence by showing truck's value by comparable and available units, the measure of damages was determined by plaintiff's evidence and not by the blue book list value. *Favero v. Culhane*, 142 M 69, 381 P 2d 487.

References

Hursh v. Mon-O-Co. Oil Corp., 139 M 302, 363 P 2d 485, 487.

17-202. (8660) Detriment defined.**References**

Cited or applied in *Hoenstine v. Rose*, 131 M 557, 312 P 2d 514, 517; *Hursh v.*

Mon-O-Co. Oil Corp., 139 M 302, 363 P 2d 485, 487.

17-208. (8666) Exemplary damages—in what cases allowed.**Breach of Contract**

Plaintiff was not entitled to exemplary damages in action for allegedly fraudulent representations by defendant's insurance adjuster inducing execution of a contract of release by the plaintiff. *Westfall v. Motors Ins. Corp.*, 140 M 564, 374 P 2d 96, 99.

Eviction of Tenant

Where a landlord, in doing an act which constructively evicts the tenant, is motivated by a desire to vex, injure or annoy the tenant, the act is done maliciously and a jury may award punitive damages. *Cruse v. Clawson*, 137 M 439, 352 P 2d 989, 995.

CHAPTER 3—MEASURE OF DAMAGES**17-301. (8667) Measure of damages for breach of contract.****Breach by Both Parties**

Where buyer of exclusive business rights in a territory broke contract by failing to make payments as they fell due and seller broke the contract by doing business in the same territory, seller could not defend his breach by claiming a rescission of the contract when he later brought an action for the amount due on it and buyer was entitled to setoff amount of profit seller took from the territory. *Leiman-Scott, Inc. v. Holmes*, 142 M 58, 381 P 2d 489.

Detriment Proximately Caused

In action by plaintiffs, who purchased residence from contractor before it was completed, to recover for defective material and workmanship, instruction, although broad, was not prejudicial, where it read: "You are instructed that if you find from a preponderance of the evidence in this action that plaintiffs are entitled to damages, then in arriving at the meas-

ure of damages, it is the amount which will compensate the plaintiff for all detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom, or which has resulted therefrom." *Mitchell v. Carlson*, 132 M 1, 313 P 2d 717, 719, 720.

Hail Insurance

In an action by the insured against his insurer to recover loss to the insured trailer caused by a hail storm where the insurer failed to prove the measure of damages according to its theory of the case, the district court was not in error in entering judgment for the insured on the basis of estimate of cost of repairing hail damage. *Eby v. Foremost Ins. Co.*, 141 M 62, 374 P 2d 857, 861.

References

Cited or applied in *Orford v. Topp*, 136 M 227, 346 P 2d 566, 568.

17-306. (8672) Breach of agreement to convey real property.**Cost of Altering Other Property**

Where, under instructions based on this section and section 17-602, the jury was told that the plaintiff could recover the difference between the price agreed to be paid and the price plaintiff would be required to pay for similar property, the jury could not properly award an amount based on the projected costs of making some other property similar. *Orford v. Topp*, 136 M 227, 346 P 2d 566, 569.

Price of Other Property

This section and section 17-602 must be applied together in an appropriate case and, thus, where bad faith is shown, the aggrieved buyer's damages are set at the

difference between the price he agreed to pay and the price he is required to pay on the market for equivalent property. *Orford v. Topp*, 136 M 227, 346 P 2d 566, 568.

Property of Peculiar Value

This section and section 17-603 must be construed together in determining damages in a case where the property of which the buyer is deprived has a peculiar value to him. *Orford v. Topp*, 136 M 227, 346 P 2d 566, 569.

Where there was no evidence to show any peculiar value to the plaintiffs in the property of which they were deprived, a verdict in excess of the difference between the price which the purchasers agreed to

pay and the price for which the property was sold by the vendor was not supported.

Orford v. Topp, 136 M 227, 346 P 2d 566, 569.

17-308 to 17-314. (8674 to 8680) Repealed.

Repeal

These sections (Secs. 4308 to 4314 Civ. C. 1895), relating to breaches of contracts

to buy or sell personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1963.

17-319. (8685) Repealed.

Repeal

This section (Sec. 4319, Civ. C. 1895), relating to breach of promise of marriage,

was repealed by Sec. 7, Ch. 200, Laws 1963.

CHAPTER 4—DAMAGES FOR WRONGS

Section 17-410. Emergency care rendered at scene of accidents.

17-401. (8686) Breach of obligation other than contract.

Loss of Profits

A person may recover for loss of profits where it is shown that such loss is the natural and direct result of the act of the defendant complained of and that such amount is certain and not speculative. *Cruse v. Clawson*, 137 M 439, 352 P 2d 989, 994.

Personal Injury Actions

There is no measuring stick by which to determine the amount of damages to be awarded in personal injury actions. Each case must depend upon its own particular facts. *Chavez v. United States*, 192 F Supp 263, 270.

References

Cited or applied in *Hoenstine v. Rose*, 131 M 557, 312 P 2d 514, 517.

17-408. (8693) Injuries to animals.

Exemplary Damages

In an action for damages resulting from collision of plaintiffs' logging truck with defendant's cattle, in which defendant cross-complained for loss of cattle and exemplary damages, an award of \$2,500 exemplary damages for loss of twenty head of cattle was not improper. *Franck v. Hudson*, 140 M 480, 373 P 2d 951, 954.

Under this section it is within the province of the jury to fix the amount of exemplary damages and the supreme court will not interfere with such a determination unless it appears to have been influenced by passion, prejudice, or some improper motive. *Franck v. Hudson*, 140 M 480, 373 P 2d 951, 954.

17-410. Emergency care rendered at scene of accidents. Any person licensed as a physician and surgeon under the laws of the state of Montana, or any other person, who in good faith renders emergency care or assistance, without compensation, at the scene of an emergency or accident, shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by wilful or wanton acts or omissions by such person in rendering such emergency care.

History: En. Sec. 1, Ch. 93, L. 1963.

any acts or omissions by such persons rendering such emergency care.

Title of Act

An act to provide that licensed physicians and surgeons, and other persons, shall not be liable for any civil damages for the rendition of emergency care or assistance done without compensation at the scene of emergencies or accidents, for

Effective Date

Section 2 of Ch. 93, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 28, 1963.

CHAPTER 5—PENAL DAMAGES

17-1503. (8696) Injuries to trees, etc.

References

Cited in *Thompson v. Mattuschek*, 134 M 500, 333 P 2d 1022, 1027.

CHAPTER 6—VALUE—HOW ESTIMATED—LIMITATIONS OF DAMAGES

17-601, 17-602. (8699, 8700) Repealed.

Repeal

These sections (Secs. 4360, 4361, Civ. C. 1895), relating to the measure of dam-

ages in actions involving personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

17-603. (8701) Property of peculiar value.

Damages to Purchaser

This section and section 17-306 must be construed together in determining damages in a case where the property of which the buyer is deprived has a peculiar value to him. *Orford v. Topp*, 136 M 227, 346 P 2d 566, 569.

alone, and where a measure of damages based on market value would be manifestly inadequate. *Orford v. Topp*, 136 M 227, 346 P 2d 566, 569.

Insufficient Evidence of Peculiar Value

Where there was no evidence to show any peculiar value to the plaintiffs in the property of which they were deprived, a verdict in excess of the difference between the price which the purchasers agreed to pay and the price for which the property was sold by the vendor was not supported. *Orford v. Topp*, 136 M 227, 346 P 2d 566, 569.

Deprivation of Property

Similar statutes have been held applicable to cases involving damage to property in which an individual has had an interest or possession, or has made special use thereof over a period of time, and in which the property has acquired a value which was peculiar to that individual

CHAPTER 8—SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS

17-803. (8716) No remedy unless mutual.

Operation and Effect

Vendee of a contract for the sale of mining property cannot compel specific performance by the vendor, where the contract called for the vendee to deposit a specific amount of cash in the bank, and the vendee had not done so. *Sidwell v.*

The New Mine Sapphire Syndicate, 130 M 189, 297 P 2d 299, 303. (Dissenting opinion, 130 M 189, 297 P 2d 299, 303.)

References

Cited in *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1018.

17-807. (8720) What cannot be specifically enforced.

Certainty and Completeness of Contract

Absolute certainty and completeness in every detail is not a prerequisite of specific performance, only reasonable certainty and completeness being required. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1020.

A contract to be specifically enforced must be complete and certain in all essential matters included within its scope. Nothing must be left to conjecture or surmise, or be so vague as to make it impossible for the court to glean the intent of the parties from the instrument,

or the acts sought to be enforced. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1020.

Those matters which are merely subsidiary, collateral, or which go to the performance of the contract are not essential, and therefore need not be expressed in the informal agreement. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1020.

Lease with Option to Buy

Plaintiff was entitled to specific performance of agreement by which defendants gave plaintiff an exclusive option to purchase land under the existing lease

for \$8,500; plaintiff's method of exercising the option was to pay defendants \$1,500 before November 1, 1951; that sum would constitute the down payment on the property; payment of the balance was provided for by the plaintiff delivering to the defendants two-thirds of the

crop raised each year, such crop share to cover the payment due and owing on the contract for that year; and it was further provided that the plaintiff was to summer fallow 45 acres of land during the year 1951. *Steen v. Rustad*, 132 M 96, 313 P 2d 1014, 1020, 1021.

17-809. (8722) What parties cannot have specific performance, etc.

Operation and Effect

Vendee of a contract for the sale of mining property cannot compel specific performance by the vendor, where the contract called for the vendee to deposit a specific amount of cash in the bank and he had not done so. An allegation in the complaint that the vendee had deposited a substantial sum in the bank was not suf-

ficient since the contract called for a specific amount. *Sidwell v. The New Mine Sapphire Syndicate*, 130 M 189, 297 P 2d 299, 303. (Dissenting opinion, 130 M 189, 297 P 2d 299, 303.)

References

Cited in *Continental Oil Co. v. McNair Realty Co.*, 137 M 410, 353 P 2d 100, 110.

CHAPTER 9—SPECIFIC RELIEF—REVISION AND RESCISSION OF CONTRACTS

17-901. (8726) When contract may be revised.

Mistake as to Ownership

Where a deed reserved to the grantors the right to all the minerals, subject only to the right of grantee to receive half the royalties, the fact that grantors owned the mineral rights on only half the tract conveyed did not furnish ground for reformation in the absence of a showing of mutual mistake as to the extent of the grantor's ownership of minerals. *Crawford v. Griffith*, 137 M 140, 351 P 2d 223, 225.

Operation and Effect

Where plaintiff knew that defendant was acting under a mistake with regard

to a writing, he was not entitled to revision on the ground of mistake. *Schilling v. Huber*, 133 M 80, 320 P 2d 346, 348.

Where a landowner, induced by the fraud of the person with whom he was contracting, assigned a 1/32 royalty interest instead of an undivided 1/32 interest in and to minerals under and upon his lands, the assignment will be reformed, amended, and corrected by the courts to correctly embody the agreement of the parties. *Carroll v. Funk*, 222 F 2d 508, 511.

17-902. (8727) Presumption as to intent of parties.

Mineral Rights

Grantors seeking reformation of deeds by which they retained portions of landowners' mineral royalties were not entitled to relief where evidence did not

show that deeds contained no provision reserving all mineral and leasing rights in grantors. *Voyta v. Clonts*, 134 M 156, 328 P 2d 655, 661.

17-903. (8728) Principles of revision.

References

Cited in *Voyta v. Clonts*, 134 M 156, 328 P 2d 655, 661.

CHAPTER 10—SPECIFIC RELIEF—CANCELLATION OF INSTRUMENTS

17-1002. (8734) Instrument obviously void.

Effect on Lease

This section fortifies a holding that when a tax claim has been removed as a cloud on title, a lease given by the

tax claimant no longer constitutes a cloud on the title even though the lessee was not a party to the quiet title action. *Purcell v. Gibbs*, 133 M 481, 326 P 2d 679.

CHAPTER 12—ALIENATION OF AFFECTIONS—BREACH OF
PROMISE TO MARRY

- Section 17-1201. Causes of action for alienation of affections abolished.
17-1202. Causes of action for breach of promise abolished—actions for fraud, deceit, and unjust enrichment preserved.
17-1203. Acts within state not to give rise to cause of action.
17-1204. Litigation and threat of litigation prohibited.
17-1205. Settlements and compromises void.
17-1206. Penalty for violations.

17-1201. Causes of action for alienation of affections abolished. All civil causes of action for alienation of affections of husband or wife are hereby abolished; provided, however, that this section shall not apply to causes of action which have heretofore accrued.

History: En. Sec. 1, Ch. 200, L. 1963. of promise of marriage and for alienation of affections and repealing section 17-319, R.C.M., 1947.

Title of Act
An act abolishing the actions for breach

17-1202. Causes of action for breach of promise abolished—actions for fraud, deceit, and unjust enrichment preserved. All causes of action for breach of contract to marry are hereby abolished; provided, however, that where a plaintiff has suffered actual damage due to fraud or deceit or a defendant has been unjustly enriched, the plaintiff may maintain an action for fraud or deceit or unjust enrichment and recover therein only the actual damage proved or for the benefit wrongfully obtained or restitution of property wrongfully withheld, where such action otherwise is maintainable under existing law.

History: En. Sec. 2, Ch. 200, L. 1963.

17-1203. Acts within state not to give rise to cause of action. No act hereafter done within this state shall operate to give rise, either within or without this state, to any of the causes of action abolished by this act. No contract to marry, which shall hereafter be made within this state, shall operate to give rise, either within or without this state, to any cause of action for breach thereof. It is the intention of this act to fix the effect, status, and character of such acts and contracts, and to render them ineffective to support or give rise to any such causes of action, within or without this state.

History: En. Sec. 3, Ch. 200, L. 1963.

17-1204. Litigation and threat of litigation prohibited. It shall hereafter be unlawful for any person, either as litigant or attorney, to file, cause to be filed, threaten to file, or threaten to cause to be filed in any court in this state, any pleading or paper setting forth or seeking to recover upon any cause of action abolished or barred by this act, whether such cause of action arose within or without this state.

History: En. Sec. 4, Ch. 200, L. 1963.

17-1205. Settlements and compromises void. All contracts and instruments of every kind which may hereafter be executed within this state in payment, satisfaction, settlement, or compromise of any claim or cause

of action abolished or barred by this act, whether such claim or cause of action arose within or without this state, are hereby declared to be contrary to the public policy of this state and absolutely void. It shall be unlawful to cause, induce or procure any person to execute such a contract or instrument, or cause, induce or procure any person to give, pay, transfer, or deliver any money or thing of value in payment, satisfaction, settlement, or compromise of any such claim or cause of action, or to receive, take, or accept any such money or thing of value in such payment, satisfaction, settlement or compromise. It shall also be unlawful to commence or cause to be commenced, either as litigant or attorney in any court of this state, any proceeding or action seeking to enforce or recover upon any such contract or instrument, knowing it to be such, whether the same shall have been executed within or without this state; provided, however, that this section shall not apply to the payment, satisfaction, settlement, or compromise of any causes of action which are not abolished or barred by this act, or any contracts or instruments heretofore executed, or to the bona fide holder in due course of any negotiable instrument which may be executed hereafter.

History: En. Sec. 5, Ch. 200, L. 1963.

17-1206. Penalty for violations. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction therefor shall be punishable by a fine of not less than one hundred dollars nor more than one thousand dollars, or imprisonment for a term of not less than one year nor more than five years, in the discretion of the court.

History: En. Sec. 6, Ch. 200, L. 1963.

Repealing Clause

Section 7 of Ch. 200, Laws 1963 read
"Section 17-319, R.C.M. 1947, is repealed."

TITLE 18—DEBTOR AND CREDITOR

Chapter 2. Bulk sales, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 2—BULK SALES

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

18-201 to 18-205. (8607 to 8611) Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 145, L. 1907; Sec. 1, Ch. 128, L. 1915; Secs. 1 to 4, Ch. 106, L. 1931), relating to bulk sales, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 3—ASSIGNMENTS FOR BENEFIT OF CREDITORS

18-314. (8625) Verification of inventory—assignee to file, etc.

Cross-Reference

Application of Montana Rules of Civil Procedure to proceedings on assignment, see M. R. Civ. P., Rule 81(a), Table A.

TITLE 19—DEFINITIONS AND GENERAL PROVISIONS

- Chapter 1. Definitions and construction of terms—holidays—other general provisions, 19-103, 19-107.
2. Publication of notice by radio or television, 19-201 to 19-203.

CHAPTER 1—DEFINITIONS AND CONSTRUCTION OF TERMS— HOLIDAYS—OTHER GENERAL PROVISIONS

- Section 19-103. Certain words defined.
19-107. Legal holidays and business days defined.

19-102. (15) Words and phrases, how construed.

References

Cited or applied in *State v. Bain*, 130 M 90, 295 P 2d 241, 244.

19-103. (16) **Certain words defined.** The following words when used in the Revised Codes of Montana of 1947, or in any act amendatory of or supplemental to said codes, shall have the following meanings and interpretations unless otherwise apparent from the context. The present tense includes the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular; the word person includes a corporation as well as a natural person; writing includes printing; oath includes affirmation or declaration, and every mode of oral statement under oath or affirmation is embraced in the term "testify," and every written one in the term "depose"; signature or subscription includes mark when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have the signification attached to them in this section, unless otherwise apparent from the context.

1 to 21. * * * [Same as parent volume.]

22. "Pledge," "mortgage," "conditional sale," "lien," "assignment," and like terms, when used in referring to a security interest in personal property, shall include a corresponding type of security interest under the Uniform Commercial Code—Secured Transactions. [Effective January 1, 1965.]

History: En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963. Cal. Pol. C. Sec. 17.

Amendment

The 1963 amendment added paragraph 22.

Negligence

"Negligence is the failure to do what a reasonable and prudent person would or

dinarily have done under the circumstances of the situation, or doing what such a person under the existing circumstances would not have done," and where plaintiff's property was damaged by the dropping of fire retardant from airplanes and at the trial he failed to show the lack of due care under the circumstances, the trial court properly nonsuited plaintiff upon defendant's motion. *Stocking v. Johnson Flying Service*, 143 M 61, 387 P 2d 312.

Res ipsa loquitur does not relieve the plaintiff of the burden of proving action-

able negligence nor it is sufficient that he show that he was injured and that the instrumentality which caused his injury was in the control of the defendant; he must also show that the accident would not have occurred in the ordinary course of events if the defendant had exercised due care. *Stocking v. Johnson Flying Service*, 143 M 61, 387 P 2d 312.

Person

A logging corporation acting in the capacity of an independent contractor is not a "person" as set forth in section 45-401, R. C. M. 1947, and is not entitled to a logger's lien thereunder. *Jack Long Logging Co. v. Pyramid Mountain Lumber, Inc.*, 143 M 87, 387 P 2d 712.

Prescription and Adverse Possession

The doctrine of prescription pertains to acquisition of a nonpossessory interest

while the doctrine of adverse possession pertains to the acquisition of a possessory interest; the two terms are entirely different but the interests are determined in a similar manner. *Brannon v. Lewis and Clark County*, 143 M 200, 387 P 2d 706.

Residence

The rules set forth in section 83-303 R. C. M. 1947, are guides for interpretation of the meaning of "residence" which must be applied to each case in the light of the facts of that case; they are not a definition. *McCarthy v. Montana Power Co.*, 143 M 134, 387 P 2d 438.

References

Cited or applied in *State ex rel. Burns v. Lacklen*, 129 M 243, 284 P 2d 998, 1001; *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 30; *Cruse v. Clawson*, 137 M 439, 352 P 2d 989, 995.

19-107. (10) **Legal holidays and business days defined.** The following are legal holidays in the state of Montana, to-wit: Every Sunday; the first day of January (New Year's Day); the twelfth day of February (Lincoln's Birthday); the twenty-second day of February (Washington's Birthday); the thirtieth day of May (Memorial Day); the fourth day of July (Independence Day); the first Monday of September (Labor Day); the twelfth day of October (Columbus Day); the eleventh day of November (Veterans' Day); the twenty-fifth day of December (Christmas Day); every day on which a general election is held throughout the state and every day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving or holiday. If any of the holidays herein enumerated (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days than those herein mentioned are to be deemed business days for all purposes, except as herein provided.

Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturdays, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays, and no other holidays, viz.: Every Sunday; the first day of January (New Year's Day); the thirtieth day of May (Memorial Day); the fourth day of July (Independence Day); the first Monday of September (Labor Day); the twenty-fifth day of December (Christmas Day); and every day appointed by the president of the United States of America or by the governor of the state of Montana for a public fast, thanksgiving or holiday; provided, however, that any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law, and provided further that it shall be optional for any bank, whether practicing Saturday closing or not, to observe

as a holiday and to be closed on any day upon which a general election is held throughout the state of Montana and on the eleventh day of November (Veterans' Day) and on any local holiday which historically or traditionally or by proclamation of a local executive official or governing body is established as a day upon which businesses are generally closed in the community in which the bank is located.

History: Ap. p. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921; re-en. Sec. 10, R. C. M. 1921; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965. Cal. Pol. C. Secs. 10-11.

Amendment

The 1965 amendment deleted "and every day upon which a general election is held throughout the state of Montana" from the general enumeration of holidays in the second paragraph; and added the second proviso to the second paragraph.

19-119 to 19-121. Repealed.

Repeal

These sections (Preamble, Secs. 1, 2, Ch. 75, L. 1947; Secs. 1, 2, Ch. 96, L. 1955; Sec. 15, Ch. 97, L. 1961), relating to the Montana fine arts' commission and the Charles M. Russell statue, were repealed

by Sec. 14, Ch. 47, Laws 1963. Section 227, Ch. 147, Laws 1963, purported to amend section 19-121; however, under the rule of section 43-515, this amendment was void.

CHAPTER 2—PUBLICATION OF NOTICE BY RADIO OR TELEVISION

Section 19-201. Supplemental publication of notice by radio or television—manner in which made.

19-202. Copy or transcription of broadcast—period for which retained.

19-203. Proof of publication by broadcast.

19-201. Supplemental publication of notice by radio or television—manner in which made. Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement such publication by a radio or television broadcast of a summary of such notice, or by both of such broadcasts, when, in his judgment, the public interest will be served. The summary of such notice only shall be read with no reference to any person by name then a candidate for political office, and such announcements shall be made only by duly employed personnel of the station from which such broadcast emanates, and announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice, unless no broadcast station exists in such county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

History: En. Sec. 1, Ch. 149, L. 1963.

Title of Act

An act providing for supplemental publication by radio broadcast and television

broadcast of a summary of any notice required by law to be published by any official of the state or any of its political subdivisions.

19-202. Copy or transcription of broadcast—period for which retained. Each radio or television station broadcasting any summary of a legal notice shall for a period of six (6) months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

History: En. Sec. 2, Ch. 149, L. 1963.

19-203. Proof of publication by broadcast. Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager or a program director of the radio or television station broadcasting the same.

History: En. Sec. 3, Ch. 149, L. 1963.

TITLE 20—DEPOSIT

Chapter 3. Deposit for keeping—storage—unclaimed property, 20-314.

CHAPTER 2—DEPOSIT FOR KEEPING—GRATUITOUS DEPOSIT

20-203. (7650) Obligations as to use of thing deposited.

References

Cited or applied in State ex rel. Olsen
v. Sundling, 128 M 596, 281 P 2d 499, 502.

20-209. (7656) Gratuitous deposit defined.

References

Cited or applied in State ex rel. Olsen
v. Sundling, 128 M 596, 281 P 2d 499, 502.

CHAPTER 3—DEPOSIT FOR KEEPING—STORAGE—UNCLAIMED PROPERTY

Section 20-314. Uniform Commercial Code—applicability.

20-302. (7661) Degree of care required of depositary for hire.

References

Dorall v. Davis, 139 M 69, 360 P 2d 409.

20-314. Uniform Commercial Code—applicability. The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. 20-314 by Sec. 11-116,
Ch. 264, L. 1963.

TITLE 21—DIVORCE

Chapter 1. Dissolution of marriage—divorce, 21-135.1, 21-150.

CHAPTER 1—DISSOLUTION OF MARRIAGE—DIVORCE

Section 21-135.1. Waiting period before hearing on divorce or separate maintenance—reconciliation attempts.

21-150. Divorces granted by other jurisdictions—when not recognized.

21-102. (5735) Effect of divorce.

Cross-Reference

Waiting period for remarriage, sec. 48-151.

21-103. (5736) Causes for divorce.

Agreement on Property Settlement

An agreement as to a property settlement which was not collusive for the purpose of bringing about or facilitating a divorce would be enforced. *Schulz v. Fox*, 136 M 152, 345 P 2d 1045.

Relief Granted

There is no authority in the Montana Civil Code whereby the courts, by statute, could grant a divorce where only separate maintenance is sought. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

21-106. (5738) Extreme cruelty defined.

Bodily Injury

Husband was entitled to divorce where wife had repeatedly inflicted and threatened bodily injury and personal violence upon him. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 119.

False Accusations

Unfounded accusations of misconduct may constitute cruelty. *Hennity v. Hennity*, 137 M 403, 352 P 2d 689, 692.

Harassing Actions

The maintenance by the wife of the accusations of misconduct, determined to be unproved, and the maintenance of a separate maintenance suit, with no offer of reconciliation, along with the other acts of cruelty proved to have existed, was conduct of such a nature as "to defeat the

Where wife files complaint seeking separate maintenance, and husband files cross-complaint seeking an absolute divorce but court finds against husband, the court cannot, in finding for the wife, decree an absolute divorce in her favor, since the court may not grant any relief beyond that which is sought for by the prevailing party. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

proper and legitimate objects of marriage" and "to render the continuance of the married relations between the parties perpetually unreasonable or intolerable" within the meaning of this section, and which were persisted in for one year preceding the commencement of the action. *Hennity v. Hennity*, 137 M 403, 352 P 2d 689, 691, 692.

Provocation

Trial judge must determine whether sufficient provocation exists to provoke wife into violent action against husband. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 120.

References

Cited or applied in *Reed v. Reed*, 130 M 409, 304 P 2d 590, 593 at 595 (dissenting opinion).

21-112. (5744) Desertion—how cured.

Cruel Treatment

Wife seeking separate maintenance was not guilty of desertion where she was forced to leave defendant because of his

cruel treatment and brutal acts. *Reynolds v. Reynolds*, 132 M 303, 317 P 2d 856, 859.

21-115. (5747) Wilful neglect, what constitutes.**References**

Cited in *Murphy v. Murphy*, 134 M 594,
335 P 2d 296, 297.

21-117. (5749) Desertion, neglect or habitual intemperance, etc.**References**

Cited in *Murphy v. Murphy*, 134 M 594,
335 P 2d 296, 297.

21-118. (5750) Divorces denied, on showing what.**Recrimination**

The doctrine of recrimination is that if both parties have a right to divorce, neither party has. The principle is of ancient origin and reached back to the Mosaic Code and beyond. Although the Roman law did not allow divorce yet some legal historians trace the rule back to the "compensatio criminum" of the Roman law relating to property settlements. The ecclesiastical courts of England adopted the principle from the canon law and then injected it into proceedings for separation from bed and board. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 270.

It is not an absolute but a qualifying doctrine. If it were to be applied strictly great inequity would be done, for it so often happens that neither party to a suit has been free from fault. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 271.

When the record clearly shows "the legitimate objects of the marriage have been destroyed" then the parties are entitled to have the marriage dissolved. No public policy would be served by denying a divorce because each party was guilty of extreme cruelty toward the other. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 271.

Doctrine of recrimination was inapplicable where court found that defendant husband was not guilty of the infliction of extreme cruelty upon the plaintiff wife, nor was he guilty of the infliction of grievous mental suffering upon the plaintiff. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 120.

References

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 45.

21-120. (5752) Collusion, what constitutes.**References**

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 45.

21-122. (5754) Requisites to condonation.**Absence of Good Faith**

Offers and solicitation of condonation were not made in good faith and did not bar plaintiff's action for separate maintenance where record showed that defendant was exploring the possibility of obtaining a church annulment of the mar-

riage; there was an absence of good faith on his part in seeking condonation; and there was no evidence tending to show that plaintiff would be free of danger of renewed cruelty were she to return and live with defendant. *Reynolds v. Reynolds*, 132 M 303, 317 P 2d 856, 858.

21-128. (5760) Recrimination, what constitutes.**Recrimination**

It is not an absolute but a qualifying doctrine. If it were to be applied strictly great inequity would be done, for it so

often happens that neither party to a suit has been free from fault. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 271.

21-134. (5766) Period of residence required to entitle plaintiff, etc.**References**

Cited or applied in *Mortenson v. Mortenson*, 129 M 290, 285 P 2d 834, 836;

Reed v. Reed, 130 M 409, 304 P 2d 590, 593 at 595 (dissenting opinion).

21-135. (5767) Divorce not granted by default alone, etc.**References**

Cited or applied in *Reed v. Reed*, 130 M 409, 304 P 2d 590, 593 at 600 (dissenting opinion).

21-135.1. Waiting period before hearing on divorce or separate maintenance—reconciliation attempts. No hearing upon grounds for divorce shall be held in any action for divorce from the bonds of matrimony or for separate maintenance until at least twenty (20) days after the commencement of the action and service of process. During such period of twenty (20) days or longer, the court, upon application of one of the parties, may require a conference of the parties with a person or persons of their own choosing in order to determine whether or not a reconciliation is practicable.

In any action of divorce from the bonds of matrimony or for separate maintenance, where grounds for divorce or separate maintenance have been established, if the court finds that attempts at reconciliation are practicable and to the best interests of the family, it shall stay the proceedings for a period not to exceed ninety (90) days where there are minor children in the family.

History: En. Sec. 1, Ch. 167, L. 1963.

Title of Act

An act to require a compulsory waiting

period between the time of service of process and the hearing in a divorce action, and for a stay of proceedings to attempt reconciliation.

21-136. (5768) Relief may be adjudged, when divorce is denied.**Legislative Policy**

The apparent policy of the legislature in adopting this section was to discourage the incautious granting of divorces and in doubtful cases to give the court the authority to grant a separation rather than to destroy the vinculum of the marriage, the reason for this being that a reconciliation of the parties may be accomplished by legally separating them for a time thus permitting their passions and prejudices to subside and for the further and more important reason that the children, if any, resulting from the marriage must come foremost in the court's consideration. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

Relief Not Requested

In divorce proceedings by husband in which wife's answer and cross action contained no reference to property settlement and no prayer for general relief, district court exceeded its jurisdiction when it made division of the sale proceeds of

property and impressed plaintiff's property with a lien. *Chapman v. Chapman*, 137 M 544, 354 P 2d 184, 186.

Separate maintenance may be granted to the wife without any pleading therefor. *Chapman v. Chapman*, 137 M 544, 354 P 2d 184, 186.

Separate Maintenance

There is no authority in the Montana Civil Code whereby the courts, by statute, could grant a divorce where only separate maintenance is sought. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

Where a wife files a complaint seeking separate maintenance the court cannot, in finding for the wife, decree an absolute divorce in her favor, since the court may not grant any relief beyond that which is sought for by the prevailing party. *Reed v. Reed*, 130 M 409, 304 P 2d 590, 592. (Dissenting opinions, 130 M 409, 304 P 2d 590 at 593 and 605.)

21-137. (5769) Expenses of action—alimony.**Attorney's Fees**

Additional attorney's fee was properly disallowed wife where she had been found

guilty of gross misconduct. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 121.

Attorneys' fees are wholly within the discretion of the court to grant upon a showing of necessity. *Bell v. Bell*, 133 M 572, 328 P 2d 115, 121.

Costs and counsel fees may be allowed on motion to modify child custody. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 231, 232, overruling *Wilson v. Wilson*, 128 M 511, 516, 278 P 2d 219, 222, and reinstating *McDonald v. McDonald*, 124 M 26, 218 P 2d 929, 15 ALR 2d 1260; *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1096, 1097.

An order for temporary attorney's fees is in the nature of a retainer and is but an estimate by the court, exercising its best judgment, of the value of the services that can be reasonably anticipated to be necessary. *Kronmiller v. Kronmiller*, 136 M 101, 345 P 2d 168, 170.

In fixing an estimated amount for temporary attorney's fees to be allowed the plaintiff, the court should be governed by what is fair and reasonable, having in mind the needs of the plaintiff, the financial ability of the defendant, and the manner in which she has been accustomed to live and should leave an incentive for reconciliation rather than fix a premium for separation. *Kronmiller v. Kronmiller*, 136 M 101, 345 P 2d 168, 170.

Where husband accepted the provisions for court costs and temporary support, he could not contend on appeal that wife had sufficient funds to provide for her own attorney. *Crum v. Crum*, 137 M 407, 352 P 2d 988, 989.

Continuing Jurisdiction

Generally the court's jurisdiction is continuing in child custody matters. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1095.

Expenses of Action

Upon timely and proper application made in advance of the performance of the professional services and the incurring of expenses rested within the discretion of the trial court to grant expense money regardless of whose acts and conduct were

responsible for the granting of the divorce. *Bissell v. Bissell*, 129 M 187, 284 P 2d 264, 269.

Jurisdiction

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Maintenance Money

Although this section uses the term "alimony" generically to mean "any money necessary to enable the wife to support herself or her children," it is distinguishable from money for support of wife provided in section 21-139. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1098.

Property Rights

Where plaintiff was granted an absolute divorce from defendant wife, the court did not exceed its authority in finding and holding that the defendant wife was entitled to be reimbursed for money advanced to plaintiff, which was used to accumulate the property held by the plaintiff. *Johnson v. Johnson*, 137 M 11, 349 P 2d 310, distinguished in 137 M 544, 548, 354 P 2d 184, 186.

Reduction of Support and Maintenance

Award of \$700 per month for support and maintenance was reduced to \$300 where parties were married only 27 days until separation took place; plaintiff did nothing to help accumulate the financial resources held by defendant; she had been receiving about \$25 per week as wages in Ireland prior to her marriage; she had not been accustomed to living in New York City and evidence showed that apartments were available at the cost of about \$100 per month. *Reynolds v. Reynolds*, 132 M 303, 317 P 2d 856, 859.

References

Cited or applied in *Reed v. Reed*, 130 M 409, 304 P 2d 590, 593 at 595 (dissenting opinion).

21-138. (5770) Orders respecting custody of children.

Appeal

In the absence of a strong showing of abuse of discretion by district court, custody orders should not be disturbed on appeal. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 226.

Attorney's Fees

Costs and counsel fees may be awarded in custody modifications. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 231, 232, overruling *Wilson v. Wilson*, 128

M 511, 516, 278 P 2d 219, 222, and reinstating *McDonald v. McDonald*, 124 M 26, 218 P 2d 929, 15 ALR 2d 1260; *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1096, 1097.

Continuing Jurisdiction

Generally the court's jurisdiction is continuing in child custody matters. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1095.

Custody of Children

The statutes expressly invest the trial judge with much discretion regarding the custody of children. *Wilson v. Wilson*, 128 M 511, 278 P 2d 219, 222, overruled on another point in 134 M 174, 187, 329 P 2d 225.

Habeas Corpus to Gain Custody

When decree of divorce was rendered in Utah and custody of children was granted to mother she then had the preference right. She waived this right when she offered to give up their custody and father took them to his home in Montana, and she could not deprive father of custody by habeas corpus proceedings in Montana unless he was an unfit person to have the custody, or unless it was shown that the best welfare of the children required that they be taken from him. *State ex rel. Lessley v. District Court*, 132 M 357, 318 P 2d 571, 574.

Interlocutory Nature

Child custody orders are interlocutory in nature. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 226; *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1097.

Jurisdiction

Although proceedings for divorce are undoubtedly statutory, jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Modification

Child custody orders are modifiable in the sound discretion of the district court for good cause shown. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 226.

In hearings on motions to modify child custody orders, parties desiring written findings of facts and conclusions of law must move for them in writing at the close of the evidence, as the statute requires. Even then, if the evidence justifies but one conclusion, formal findings are not necessary. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 230.

In the absence of statute, the court need not make formal findings of fact in support of its order modifying the custody provisions of divorce decrees. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 229.

Mother's affidavit on which citation for hearing on modification of custody decree was issued was properly controverted by father's verified answer. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 229.

When the custodial fitness of neither spouse is questioned a bill of exceptions and a judgment roll reflecting four modifications of custody orders in nine weeks, no matter how well intended or by whom

sought or ordered, supported by undisputed testimony, is clear prima facie record of substantial change affecting the children warranting modification of decree. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 228.

Father who refuses to make payments for support of children required by the decree is not entitled to petition for modification of the decree unless the best interests and welfare of the children require the modification. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1098.

Mother Preferred

Other things being equal, custody in the mother is to be preferred where children are of tender years. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 226.

Operation and Effect

An order by a California court which modified a prior California divorce decree and awarded custody of minor children to the father was void because it was made without jurisdiction where it was shown that the children were domiciled in Montana with their mother, even though the mother made a general appearance in the California court to contest the modification. Where the minor's domicil is not within the jurisdiction at the time, the "res" likewise is not within the jurisdiction. The courts may not proceed even with both parents before it. A minor has a juristic status of his own to which it is difficult indeed to deny recognition when his custody is the question before the court, and even though the contest is between his parents, who themselves have submitted to the jurisdiction of the court. For he is the real party in interest in any such case as is evidenced by the familiar rule that in awarding his custody the paramount inquiry is always his welfare and best interests. *Application of Enke*, 129 M 353, 287 P 2d 19, 24, cert. den. 350 U S 923, 100 L Ed 808, 76 S Ct 212.

Order of Visitation

The privilege of visitation should not be left entirely to the discretion of the party having the child in custody. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1097.

Right of visitation may be conditioned upon prompt payment of money decreed for support of children. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1098.

Residence of Children

Limitations on residence of children are to be conditioned by what appears best for the children and the trial judge is invested with much discretion in these matters. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 230; *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1097.

There was no abuse in the discretion exercised by the district court in refusing to restrict residence of children where their well-being was not so much dependent upon continuance or change of their present residence as upon change in their parents' hearts. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1097.

21-139. (5771) Support of wife and children on divorce, etc.

"Maintenance Money" Distinguished

The term "alimony" as used in this section is distinguishable from "maintenance money" provided by section 21-137. *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1098.

Modification of Custody Orders

Costs and counsel fees may be allowed on motion to modify child custody. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 231, 232, overruling *Wilson v. Wilson*,

Stay of Appeal

An appeal from an order modifying divorce decree does not stay the enforcement of the order. It can only be stayed by an application for an order staying the proceedings under section 93-8003, subd. 2. *Application of Nelson*, 132 M 252, 316 P 2d 1058, 1059.

128 M 511, 516, 278 P 2d 219, 222, and reinstating *McDonald v. McDonald*, 124 M 26, 218 P 2d 929, 15 ALR 2d 1260; *Barbour v. Barbour*, 134 M 317, 330 P 2d 1093, 1096, 1097.

References

Cited or applied in *Johnson v. Johnson*, 137 M 11, 349 P 2d 310, 312.

21-142. (5774) Property may be subjected to support, etc.

References

Cited in *Johnson v. Johnson*, 137 M 11, 349 P 2d 310, 312.

21-145. (5777) Disposition of homestead on divorce.

References

Cited in *Johnson v. Johnson*, 137 M 11, 349 P 2d 310, 312.

21-150. Divorces granted by other jurisdictions—when not recognized. An ex parte divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force and effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced. Proof that a person obtaining an ex parte divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this state within twelve months prior to the commencement of the proceeding therefor, and resumed residence in this state within eighteen months after the date of his departure therefrom, or (b) at all times after his departure from this state and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced. Otherwise, the burden for impeaching the validity of a foreign divorce decree shall rest upon the assailant and prima facie validity shall be accorded to divorce decrees of sister states.

History: En. Sec. 1, Ch. 168, L. 1963.

Title of Act

An act to provide rules for the recogni-

tion of ex parte foreign divorces and establishing certain presumptions as to domicile.

TITLE 22—DOWER

CHAPTER 1—DOWER

22-101. (5813) Dower.

Construction of Borrowed Statutes

The dower statutes, being borrowed from Illinois, will receive the same construction by the Montana courts as previously given by the courts of Illinois. In *re Roberts' Estate*, 135 M 149, 338 P

2d 719. Certiorari denied 361 U S 825, 4 L Ed 73, 80 S Ct 82.

References

Cited in *Purcell v. Gibbs*, 133 M 481, 326 P 2d 679.

22-107. (5819) Widow may elect.

Apportionment of Federal Estate Taxes

In the absence of other provisions by the testator the cost of federal estate taxes will be equitably allocated between probate and nonprobate taxable property of the decedent's estate. In *re Marans' Estate*, 143 M 388, 390 P 2d 443.

Effect of Renunciation

Where the testator left a will and his estate consisted entirely of personal property, the widow, as sole survivor, could not defeat the legacies contained therein

and create an intestacy by renouncing under the provisions of this section. In *re Roberts' Estate*, 135 M 149, 338 P 2d 719. Certiorari denied 361 U S 825, 4 L Ed 73, 80 S Ct 82.

Nonprobate Assets

This section does not intend to include federal estate taxes on nonprobate assets where the widow elects to take against the will. In *re Marans' Estate*, 143 M 388, 390 P 2d 443.

22-108. (5820) Renunciation and form of.

References

Cited in *In re Roberts' Estate*, 135 M

149, 338 P 2d 719, 720. Certiorari denied 361 U S 825, 4 L Ed 73, 80 S Ct 82.

22-116. (5828) Right to dower not affected by acts of husband.

Operation and Effect

Where vendor's wife did not sign a contract for deed, and there was no evidence that she intended to join in a deed conforming to the contract for deed,

no action would lie against her for reformation of the deed to conform to the contract. *Schillinger v. Huber*, 133 M 80, 320 P 2d 346, 350.

TITLE 23—ELECTIONS

- Chapter 3. Qualifications and privileges of electors, 23-304.
5. Registration of electors, 23-501.1, 23-502, 23-503, 23-505, 23-511, 23-513 to 23-515, 23-519, 23-527.
 6. Judges and clerks of elections, 23-604.1, 23-604.2, 23-605, 23-608, 23-612.
 7. Election supplies, 23-704.
 8. Nomination of candidates for special elections by convention or primary meetings or by electors, 23-807, 23-809.
 9. Party nominations by direct vote—the direct primary, 23-902, 23-908, 23-909, 23-912, 23-929.
 10. Political parties, 23-1008, 23-1009.
 11. Ballots, preparation and form, 23-1117.
 12. Conducting elections—the polls—voting and ballots, 23-1210, 23-1213, 23-1219.
 13. Voting by absent electors, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1306, 23-1307, 23-1309, 23-1311 to 23-1313, 23-1320.
 14. Voting by absent electors in United States service, 23-1401 to 23-1405.
 16. Voting machines—conduct of election when used, 23-1608, 23-1608A, 23-1611.
 17. Election returns, 23-1702, 23-1703, 23-1709, 23-1712, 23-1714, 23-1715.
 18. Canvass of election returns—results and certificates, 23-1807, 23-1808, 23-1813, 23-1815.
 20. Nonpartisan nomination and election of judges of supreme court and district courts, 23-2001, 23-2003, 23-2005.
 22. Members of Congress—elections and vacancies, 23-2206.
 23. Recount of ballots—results, 23-2309 to 23-2323.
 25. Electronic voting systems, 23-2501 to 23-2507.

CHAPTER 2—PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

23-201. (537.1) Publication and printing of amendments, etc.

Cross-Reference	and Constitutional measures to be pre-
Explanation of initiative, referendum	pared by attorney general, sec. 37-104.1.

CHAPTER 3—QUALIFICATIONS AND PRIVILEGES OF ELECTORS

Section 23-304. Lists and precinct registers.

23-304. Lists and precinct registers. After the closing of registrations the county clerk of each county shall promptly prepare lists of registered electors of all voting precincts in his county. He shall also prepare the precinct register for each precinct in the manner provided by section 23-515, and deliver the same to the judges of election prior to the opening of the polls. In preparing precinct registers it shall not be necessary for the county clerk to make separate precinct registers containing only the names of electors who are qualified to vote on the question of the incurring of a state debt, the issuance of bonds or debentures by the state or the levying of a state tax. In lieu of preparing such a list of electors qualified to vote on such question, the county clerk shall stamp the word "TAX-PAYER" on the precinct register opposite the name of each qualified elector who is a taxpayer and entitled to vote upon any of the questions hereinbefore indicated. No other showing shall be required to establish that such elector is in fact a taxpayer and entitled to vote as such.

All of the laws of this state applying to the holding of general biennial state elections, insofar as the same are applicable thereto and not in conflict with any of the provisions of this act, shall apply to, and govern and control such election and the canvassing and return of the votes cast on such question at such election; and abstracts made by the several county clerks shall be returned to the secretary of state in the manner provided by sections 23-1812, 23-1813, for the abstract of votes for state officers.

History: En. Sec. 2, Ch. 28, L. 1945;
amd. Sec. 1, Ch. 92, L. 1949; amd. Sec. 1,
Ch. 64, L. 1959.

Amendment

The 1959 amendment substituted the words "precinct register" for the words "poll books" each time they appear.

CHAPTER 5—REGISTRATION OF ELECTORS

- Section 23-501.1. New-voter lists furnished to political parties.
23-502. Registry book and card index—affidavit of voter—lost naturalization papers.
23-503. Method of registering.
23-505. Notaries and justices of the peace—deputy registrars—compensation.
23-511. Cancellation of registry for failure to vote—re-registration—exception of persons in United States service.
23-513. Close of registration—procedure.
23-514. Printing and posting of lists of registered electors.
23-515. Precinct register—combining—when not furnished city or town.
23-519. Compensation of county clerks.
23-527. Omission of name from precinct registers—remedy.

23-501.1. New-voter lists furnished to political parties. The county clerk in each county shall, not later than thirty (30) days prior to the close of registration for any general election, as provided in section 23-513, R. C. M. 1947, submit to the county chairman of the two major political parties, a list of all persons residing in the county, who have reached voting age since the last general election. This list shall be prepared from all available sources in the county, and it shall be the duty of the other county, city and school officials to co-operate with the county clerk in preparing such list. The county clerk and other officials shall, in no event, be responsible for any honest error or omission in preparing such list.

History: En. Sec. 5, Ch. 98, L. 1965.

Title of Act

An act relating to the registration of electors; to require the county clerk of

each county to prepare a list of all persons residing in the county who have reached voting age since the last general election; and amending sections 23-502, 23-503, 23-505 and 23-511, R. C. M. 1947.

23-502. (554) Registry book and card index—affidavit of voter—lost naturalization papers. The official register of electors in each county shall be contained in a book designated "register," which book shall be so arranged in precincts and alphabetical divisions suitable to record the full and complete information given by each elector, and a card index of which the county clerk of such county shall at all times have the custody. The cards shall be four by six inches in size, of white calendar stock, and shall be so perforated that all cards in any drawer may be fastened in by a rod passing through such perforations, which rod shall be kept locked except when the clerk shall be making necessary changes in the register.

The registry book herein provided shall be in such form as shall be designated by the secretary of state of the state of Montana. The registry card shall be substantially in the following form:

(Face.)

State of Montana, }
County of _____ } ss.

Number	Date	Name	Sex
Where born	Date of birth	Height Ft.-In.	Occupation
Naturalized when	Where		
Residence	Postoffice	Sec.	Twp. Rg.
Length of time in	Precinct	Ward	School Dist.
State	County	City	
Date canceled	Date registered	Disability, if any	
Place where last registered			

State of Montana, }
County of _____ } ss.

_____, being duly sworn says: I am the elector whose name appears on the face of this card; the several statements thereon contained affecting my qualifications as an elector are true; I am able to mark my ballot (or I am unable to mark my ballot by reason of the physical disabilities on this card specified), and I am not registered elsewhere within the state of Montana and claim no right to vote elsewhere than in the precinct on this card specified, so help me God.

Subscribed and sworn to before me this _____ day of _____, 19__.

County Clerk and Ex officio Registrar.
By _____ Deputy.

(Back.)

Affidavit of Lost Naturalization Papers.

State of Montana, }
County of _____ } ss.

_____, being duly sworn on oath, says: I am the elector named on the face of this card; I am a naturalized citizen of the United States; my certificate of naturalization is lost or destroyed, or

beyond my present reach, and I have no certified copy thereof; I came to the United States in the year -----; I was admitted to citizenship in the state (or territory) of ----- county of -----, by the ----- court during the year -----; I last saw my certificate of naturalization, or a certified copy thereof, at -----

Subscribed and sworn to before me this ----- day of -----, 19--.

County Clerk and Ex officio Registrar.

By ----- Deputy.

History: En. Sec. 7, Ch. 113, L. 1911; amd. Sec. 7, Ch. 74, L. 1913; amd. Sec. 7, Ch. 122, L. 1915; re-en. Sec. 554, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1965.

Amendment

The 1965 amendment substituted "Date of birth" for "Age" on the face of the registry card form.

23-503. (555) Method of registering. Any elector residing within the county may register by appearing before the county clerk and ex officio registrar and making correct answers to all questions propounded by the county clerk touching the items of information called for by such registry card, and by signing and verifying or affirming the affidavit or affidavits on the back of such card. Any elector in the United States service who is absent from the state of Montana and the county of which he or she is a resident may register either (a) by mailing such registry card filled out and signed under oath to the county clerk of the county in which said elector resides, or (b) by mailing the federal post card application filled out and signed under oath to said county clerk.

If any person shall falsely personate another and procure the person so personated to be registered, or if any person shall represent his name to the county clerk or to the registration clerk or to any other person qualified to register an elector, to be different from what it actually is, and cause such name to be registered, or if any person shall cause any name to be placed upon the registry lists otherwise than in the manner provided in this act, he shall be guilty of a felony, and upon conviction be imprisoned in the state penitentiary for not less than one (1) nor more than three (3) years.

History: En. Sec. 8, Ch. 122, L. 1915; re-en. Sec. 555, R. C. M. 1921; amd. Sec. 4, Ch. 172, L. 1937; amd. Sec. 1, Ch. 83, L. 1953; amd. Sec. 1, Ch. 18, L. 1959; amd. Sec. 2, Ch. 98, L. 1965.

present second sentence in the first paragraph for a former sentence for text of which see parent volume.

The 1965 amendment inserted "or affirming" near the end of the first sentence in the first paragraph.

Amendments

The 1959 amendment substituted the

23-505. (557) Notaries and justices of the peace—deputy registrars—compensation. All notaries public and justices of the peace are designated as deputy registrars in the county in which they reside, and may register electors residing in any precinct within the county and shall receive as compensation for their services the sum of twenty-five cents (25¢) for each elector registered by them, provided that they shall receive no compensation for their services where the elector resides less than ten

(10) miles from the county courthouse. The county commissioners shall appoint two deputy registrars, one from each of the two major political parties in this state, other than notaries public and justices of the peace, for each precinct in the county. Such deputy registrar shall be a qualified, taxpaying resident elector in the precinct for which he is appointed and shall register electors in that precinct, and shall receive as compensation for his services the sum of twenty-five cents (25¢) for each elector registered by him. Each deputy registrar shall forward by mail, within two (2) days, all registration cards filled out by him to the county clerk and recorder.

History: En. Sec. 10, Ch. 122, L. 1915; amd. Sec. 1, Ch. 38, L. 1917; re-en. Sec. 557, R. C. M. 1921; amd. Sec. 5, Ch. 172, L. 1937; amd. Sec. 1, Ch. 51, L. 1941; amd. Sec. 1, Ch. 80, L. 1955; amd. Sec. 3, Ch. 98, L. 1965.

Amendment

The 1965 amendment substituted "two deputy registrars, one from each of the two major political parties in this state" for "a deputy registrar" in the second sentence.

23-511. (562) Cancellation of registry for failure to vote—reregistration—exception of persons in United States service. Immediately after every general election, the county clerk of each county shall compare the list of electors who have voted at such election in each precinct, as shown by the official poll books, with the official register of said precinct, and he shall remove from the official register herein provided for the registry cards of all electors who have failed to vote at such election, and shall mark each of said cards with the word "cancelled," and shall place such cancelled cards for the entire county in alphabetical order in a separate drawer to be known as the "cancelled file"; but any elector whose card is thus removed from the official register may reregister in the same manner as his original registration was made, and the registration card of any elector who thus reregisters shall be filed by the county clerk in the official register in the same manner as original registration cards are filed. The county clerk shall, at the same time, cancel, by drawing a red line through the entry thereof, the name of all such electors who have failed to vote at such election.

All electors whose registry cards are so removed and marked "cancelled," shall within thirty (30) days thereafter, be notified by the county clerk in writing of such removal, by sending a notice to such elector to his or her post-office address, as appearing on the registration books, card indexes, and register of electors.

In the case of an elector in the United States service who shall fail to vote, his or her registry card shall not be cancelled, except for causes designated under section 23-518.

History: En. Sec. 15, Ch. 122, L. 1915; re-en. Sec. 562, R. C. M. 1921; amd. Sec. 1, Ch. 147, L. 1937; amd. Sec. 1, Ch. 144, L. 1941; amd. Sec. 1, Ch. 177, L. 1943; amd. Sec. 2, Ch. 18, L. 1959; amd. Sec. 4, Ch. 98, L. 1965.

Amendments

The 1959 amendment substituted the present final paragraph for the former second paragraph for the text of which see parent volume.

The 1965 amendment inserted a new second paragraph.

23-513. (566) Close of registration—procedure. The county clerk shall close all registration for the full period of forty (40) days prior to

and before any election. He shall immediately transmit to the secretary of state a certificate showing the number of voters registered in each precinct in said county. The county clerk of each county must cause to be published in a newspaper within his county, having a general circulation therein, for twenty (20) days before which time when such registration shall be closed for any election, a notice signed by him to the effect that such registration will be closed on the day provided by law, and which day shall be specified in such notice; and must also state that electors may register for the ensuing election by appearing before the county clerk at his office, or by appearing before a deputy registrar or before any notary public or justice of the peace in the manner provided by law. The publication of such notice must continue for the full period of twenty (20) days. At least twenty (20) days before the time when the official register is closed for any election, the county clerk shall cause to be posted in each voting precinct at such election, notice of the time when the official register will close for such election.

History: En. Sec. 18, Ch. 113, L. 1911; amd. Sec. 18, Ch. 74, L. 1913; amd. Sec. 16, Ch. 122, L. 1915; amd. Sec. 1, Ch. 97, L. 1919; re-en. Sec. 566, R. C. M. 1921; amd. Sec. 3, Ch. 156, L. 1965.

Amendment

The 1965 amendment reduced the period specified in the first sentence from forty-five to forty days; reduced the periods of publication and posting specified in the third, fourth and fifth sentences from thirty to twenty days; and deleted "in at least five conspicuous places" after "cause to be posted" in the fifth sentence.

23-514. (567) Printing and posting of lists of registered electors. The county clerk shall, at least ten (10) days preceding any election, cause to be printed and posted a list of all electors entitled to be registered as shown by the official register of the county, and who are on the precinct registers as entitled to vote in the several precincts of such county, city or town, or school district of the first class, provided, that if the city clerk of any city or town shall, in writing, certify to the county clerk, not less than twenty-five (25) days before the date fixed by law for the holding of any primary nominating election, that no petitions for nomination under the direct primary election law for any office to be filled at the next ensuing annual city election have been filed with such city or town clerk, not less than thirty (30) days before the date fixed by law for the holding of the primary nominating election, then the county clerk shall not cause to be printed or posted such list of registered electors for such city or town. Such printed list of registered electors shall contain the name of the elector in full, together with his residence, giving the number and street, or the name of the house, (-----) and in all cases where the elector resides outside of the city or town, such printed list shall contain the post-office address of such elector, as shown by the official register card of the elector, and the registry number. The expense of printing said list shall be paid by said county, city or town, or school district, in which the election is to be held. The county clerk shall cause to be posted at each precinct in the county, not less than ten (10) days before any election, as in this act provided for, a copy of the list of registered voters herein provided for, and shall retain sufficient number of said

printed lists of registered voters in his office as may be necessary for the convenience of the public. He shall furnish to any qualified elector of any county, city or town or school district applying therefor a copy of the same. When the list of registered voters herein provided for has been printed and posted for any primary election, the same may be posted and used for the general election, but only if a supplemental list giving the names of electors who may have registered after the first list was prepared is printed and posted therewith.

History: Ap. p. Sec. 24, Ch. 113, L. 1911; amd. Sec. 24, Ch. 74, L. 1913; amd. Sec. 17, Ch. 122, L. 1915; amd. Sec. 2, Ch. 97, L. 1919; amd. Sec. 1, Ch. 235, L. 1921; re-en. Sec. 567, R. C. M. 1921; amd. Sec. 1, Ch. 61, L. 1933; amd. Sec. 1, Ch. 167, L. 1945; amd. Sec. 4, Ch. 156, L. 1965.

Amendment

The 1965 amendment substituted "at least ten (10) days preceding any election" near the beginning of the section for "at least 15 days preceding any municipal primary nominating election in towns and cities, and at least twenty (20) days preceding any other election"; inserted "at each precinct in the county" after "cause to be posted" in the fourth sentence; substituted "not less than ten (10) days before any election" in the fourth sentence

for "not less than fifteen (15) days before any municipal primary nominating election, and not less than twenty (20) days before any other election"; deleted "at least five (5) copies of such printed registry list in at least five (5) conspicuous places within said precinct" before "a copy of the list" in the fourth sentence; substituted "posted and used for the general election, but only if a supplemental list giving the names of electors who may have registered after the first list was prepared is printed and posted therewith" at the end of the section for "used for the election proper, following a posting in connection therewith, at the time provided for in this section, a supplemental list giving the names of electors who may have registered after the first list was prepared"; and made other minor changes in phraseology and punctuation.

23-515. (568) Precinct register—combining—when not furnished city or town. During the time intervening between the closing of the official register and the day of the ensuing election, the county clerk shall prepare for each precinct a book to be known as the "precinct register" which shall be for the use of the clerks and judges of election in each such precinct. Such books shall be arranged for the listing of the names of the electors in alphabetical divisions, each division to be composed of ruled columns with appropriate headings, under which the information contained upon the registry card of each elector shall be transcribed, excepting the oath of the elector, and the certified copy of the precinct registers so prepared shall be delivered to the judges of the election at or prior to the opening of the polls in each precinct. Where the precincts in municipal elections, or in elections in school districts of the first class, include more than one county precinct, the county clerk shall combine into one precinct register the names of all electors in the several precinct registers of the precincts of which such municipal or school district precinct is composed. The county clerk shall omit from the list of names of all certified voters so inserted in the precinct register herein provided for, the names and registry of all electors which it is the duty of the county clerk to cancel under the provisions of section 23-518, provided that the requirements contained in the provisions of said section shall have been brought to the attention of the county clerk not less than twenty days preceding the election. If the city clerk of any city or town shall, in writing, certify to the county clerk, not less than twenty-five days before the date fixed by

law for the holding of any primary nominating election, that no petitions for nomination under the direct primary election law for any office to be filled at the next ensuing annual city election have been filed with such city clerk, not less than thirty days before the date fixed by law for the holding of the primary nominating election, then the county clerk shall not prepare for the city any precinct register or precinct registers for that year.

History: En. Sec. 23, Ch. 113, L. 1911; amd. Sec. 23, Ch. 74, L. 1913; amd. Sec. 18, Ch. 122, L. 1915; amd. Sec. 3, Ch. 97, L. 1919; re-en. Sec. 568, R. C. M. 1921; amd. Sec. 2, Ch. 61, L. 1933; amd. Sec. 2, Ch. 64, L. 1959.

Amendment

The 1959 amendment substituted the words "precinct register" or "precinct registers" for the words "poll book" or "poll books" each time they appear.

23-519. (571) Compensation of county clerks. The county clerks shall receive, for the use and benefit of the county, from every city or town, or from every school district of the first class, (to which the precinct registers referred to in the last section have been furnished), the sum of three (\$0.03) cents for each and every name entered in such precinct registers, and in addition he shall receive in like manner the amount of the actual expense incurred in printing and posting the lists of electors, and in publishing the notices required by this law, and any other expense incurred on account of any such municipal or school district election. It shall be the duty of the city or town council, or board of school trustees, to order a warrant drawn for such sum as may be due to the county clerk under the provisions of this section, within thirty (30) days after the presentation of the account to them by said county clerk, provided, however, that in event of the election of candidates at municipal primary elections, as provided for in 11-3113, and no general municipal election is required to be held, the county clerk shall prepare no precinct registers for such general municipal election and shall make no charge therefor; provided further, that in elections of school districts of the first class if only as many candidates are nominated as there are vacancies to be filled, the county clerk shall furnish no precinct registers and make no charge therefor to such school district.

It shall be the duty of the city clerk or the clerk of the school district to notify the county clerk in such case as above mentioned, where no precinct registers are required, immediately after the facts become known to the city council or the board of trustees of the school district, which makes unnecessary the furnishing of such precinct registers.

History: En. Sec. 29, Ch. 113, L. 1911; amd. Sec. 29, Ch. 74, L. 1913; amd. Sec. 21, Ch. 122, L. 1915; re-en. Sec. 571, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1935; amd. Sec. 3, Ch. 64, L. 1959.

Amendment

The 1959 amendment substituted the words "precinct registers" for the words "poll books" each time they appear.

23-527. (579) Omission of name from precinct registers—remedy. Any elector whose name is erroneously omitted from any precinct register may apply for and secure from the county clerk a certificate of such error, and stating the precinct in which such elector is entitled to vote, and upon the presentation of such certificate to the judges of election in such precinct, the said elector shall be entitled to vote in the same manner as if his name

had appeared upon the precinct register. Such certificate shall be marked "voted" by the judges, and shall be returned by them with the precinct register.

History: En. Sec. 29, Ch. 122, L. 1915; re-en. Sec. 579, R. C. M. 1921; amd. Sec. 4, Ch. 64, L. 1959

Amendment

The 1959 amendment substituted the words "precinct register" for either the words "precinct poll-book" or "poll book" each time they appear.

CHAPTER 6—JUDGES AND CLERKS OF ELECTIONS

Section 23-604.1. Candidates and relatives ineligible.

23-604.2. School district elections—precinct elections.

23-605. Compensation of election officers.

23-608. Clerks to mail to judges notices of election—form of notices.

23-612. Instructions of judges of elections.

23-604.1. Candidates and relatives ineligible. No person shall be appointed to serve as an election judge or election clerk who is a candidate, spouse of a candidate or one who is related to a candidate for office at such election within the second degree of consanguinity.

History: En. Sec. 1, Ch. 99, L. 1961.

Title of Act

An act relating to the qualifications of election judges and election clerks prohibiting a candidate, the spouse of a candidate or one related within the second

degree of consanguinity to a candidate from serving as an election judge or election clerk; excepting school elections and candidates for precinct committeeman and committeewoman; and containing a repealing clause.

23-604.2. School district elections—precinct elections. The provisions of this act [23-604.1, 23-604.2] shall not apply to school district elections nor to candidates for precinct committeeman and committeewoman.

History: En. Sec. 2, Ch. 99, L. 1961.

all acts and parts of acts in conflict therewith.

Repealing Clause

Section 3 of Ch. 99, Laws 1961 repealed

23-605. (591) Compensation of election officers. The compensation of members of boards of election, including judges and clerks, shall be fixed by the board of county commissioners at not to exceed one dollar twenty-five cents (\$1.25) per hour for the time actually on duty, and must be audited by the board of county commissioners and paid out of the county treasury.

History: En. Sec. 1173, Pol. C. 1895; re-en. Sec. 459, Rev. C. 1907; amd. Sec. 1, Ch. 101, L. 1917; re-en. Sec. 591, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1945; amd. Sec. 1, Ch. 117, L. 1947; amd. Sec. 1, Ch. 12, L. 1951; amd. Sec. 1, Ch. 46, L. 1963. Cal. Pol. C. Sec. 1072.

Amendment

The 1963 amendment increased the maximum hourly compensation from \$1.00 to \$1.25.

23-608. (594) Clerks to mail to judges notices of election—form of notices. The clerks of the several boards of county commissioners must, at least twenty (20) days before any general election, make and forward by mail to such judge or judges as are designated by the county commissioners, three written notices for each precinct, said notices to be substantially as follows:

Notice is hereby given that on the first Tuesday after the first Monday of November, 19___, at the house _____, in the county of _____, an election will be held for _____ (naming the offices to be filled, including electors of president and vice-president, a representative in congress, state, county and township officers), and for the determination of the following questions (naming them), the polls of which election will be open at 8:00 A.M. and continuing open until 8:00 P.M. of the same day.

Dated this _____ day of _____, A.D. 19___.

Signed A. B., clerk of the board of county commissioners.

History: Ap. p. Sec. 7, p. 461, Cod. Stat. 1871; re-en. Sec. 7, p. 71, L. 1876; re-en. Sec. 521, 5th Div. Rev. Stat. 1879; re-en. Sec. 1013, 5th Div. Comp. Stat. 1887; amd. Sec. 1266, Pol. C. 1895; re-en. Sec. 506, Rev. C. 1907; re-en. Sec. 594, R. C. M. 1921; amd. Sec. 2, Ch. 167, L. 1945; amd. Sec. 1, Ch. 14, L. 1957.

Amendment

The 1957 amendment substituted "8:00 A. M. and continuing open until 8:00 P. M." for "8 o'clock in the morning and continuing open until 6 o'clock in the afternoon."

23-612. Instructions of judges of elections. Before each election, general or primary, all judges appointed to act at said election, who do not possess a certificate of instruction as provided for in this act shall be instructed by a person delegated by the board of county commissioners in regard to the powers, duties, and liabilities imposed upon election judges by the election laws of the state of Montana. For the purpose of giving such instruction, the delegate of the board of county commissioners shall call such meeting or meetings of the judges of election as shall be necessary. Each judge of election shall attend such meeting or meetings and receive at least two (2) hours of instruction, and as compensation for the time spent in receiving such instruction, each judge that shall serve in the election shall receive the sum of one dollar (\$1.00) per hour of instruction, to be paid to him at the same time and in the same manner as compensation is paid to him for his or her services on election day.

Upon the completion of the two (2) hours of instruction, the judge shall receive a certificate from the person delegated by the board of county commissioners from whom he or she has received instruction, that the instruction has been completed, provided that no certificate of instruction shall be valid for a period of greater than two (2) years. No person shall serve as a judge of election unless this certificate has been received, provided, however, that this shall not prevent the appointment of a judge of election to fill a vacancy in an emergency. Notice of place and time of instruction of the political judges must be given by the board of county commissioners to the county chairmen of the two major political parties in the county.

History: En. Sec. 1, Ch. 210, L. 1957.

Title of Act

An act to provide for instruction of election judges; providing for the appointment by the board of county commissioners of an instructor; providing for compensation for the election judges being instructed; providing for certificates of instruction; providing for notice to the

county chairman of the two major political parties of the county of the place and time of instruction; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 210, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 7—ELECTION SUPPLIES

Section 23-704. County commissioners to have blanks prepared.

23-704. (602) County commissioners to have blanks prepared. The necessary printed blanks for precinct registers, pollbooks, tally sheets, lists of electors, tickets, and returns, together with envelopes in which to inclose the returns, must be furnished by the board of county commissioners to the officers of each election precinct at the expense of the county.

History: En. Sec. 1174, Pol. C. 1895; re-en. Sec. 460, Rev. C. 1907; re-en. Sec. 602, R. C. M. 1921; amd. Sec. 5, Ch. 64, L. 1959.

Amendment

The 1959 amendment substituted "precinct registers, pollbooks, tally sheets" for "poll-lists, tally lists."

CHAPTER 8—NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS BY CONVENTION OR PRIMARY MEETINGS OR BY ELECTORS

Section 23-807. When certificates to be filed.

23-809. Secretary of state to certify to county clerk names of persons nominated.

23-807. (618) When certificates to be filed. Certificates of nomination to be filed with the secretary of state must be filed with the secretary of state not less than sixty (60) days before the date fixed by law for the election. Certificates of nomination herein directed to be filed with the county clerk must be filed not less than sixty (60) days before the election. Certificates of nomination of candidates for municipal offices must be filed with the clerks of the respective municipal corporations not more than thirty (30) days and not less than fifteen (15) days previous to the day of election; but the provisions of this section shall not be held to apply to nominations for special elections or to fill vacancies.

History: En. Sec. 8, p. 137, L. 1889; amd. Sec. 1316, Pol. C. 1895; re-en. Sec. 527, Rev. C. 1907; re-en. Sec. 618, R. C. M. 1921; amd. Sec. 1, Ch. 64, L. 1925; amd. Sec. 1, Ch. 105, L. 1943; amd. Sec. 1, Ch. 259, L. 1947; amd. Sec. 1, Ch. 160, L. 1949; amd. Sec. 5, Ch. 156, L. 1965. Cal. Pol. C. Sec. 1192.

Amendment

The 1965 amendment deleted "after the primary election and" after "must be filed with the secretary of state" in the first sentence and again after "must be filed" in the second sentence; and changed the filing dates specified in the first and second sentences from ninety to sixty days before the election.

23-809. (619) Secretary of state to certify to county clerk names of persons nominated. Not less than forty-five (45) days before an election to fill any public office, the secretary of state must certify to the county clerk of each county within which any of the electors may by law vote for candidates for such office, the name and description of each person nominated, as specified in the certificates of nomination filed with the secretary of state.

History: En. Sec. 9, p. 137, L. 1889; re-en. Sec. 1317, Pol. C. 1895; re-en. Sec. 528, Rev. C. 1907; re-en. Sec. 619, R. C. M. 1921; amd. Sec. 1, Ch. 58, L. 1925; amd. Sec. 1, Ch. 104, L. 1943; amd. Sec. 6, Ch. 156, L. 1965. Cal. Pol. C. Sec. 1193.

Amendment

The 1965 amendment deleted "nor more than ninety (90)" before "days before an election" near the beginning of the section.

CHAPTER 9—PARTY NOMINATIONS BY DIRECT VOTE—
THE DIRECT PRIMARY

- Section 23-902. Date of holding primary election—purpose of.
 23-908. Poll-books, precinct register, and tally sheets to be sealed and returned.
 23-909. Political party nominations made exclusively as herein provided.
 23-912. Time for filing petitions for nominations.
 23-929. County and city central committeemen, how elected.

23-902. (632) Date of holding primary election—purpose of. On the first Tuesday after the third Monday of August, preceding any general election not including special elections to fill vacancies, municipal elections in towns and cities, irrigation district and school elections, at which public officers in this state and in any district or county are to be elected, a primary nominating election shall be held in accordance with this act in the several election precincts comprised within the territory for which such officers are to be elected at the ensuing election, which shall be known as the primary nominating election, for the purpose of choosing candidates by the political parties, subject to the provisions of this act, for United States senators and representatives, in Congress and all other elective state, district and county officers, and delegates to any constitutional convention or conventions that may hereafter be called, who are to be chosen, at the ensuing election wholly by electors within the state, or any subdivision of this state, and also for choosing and electing county central committeemen and committeewomen by the several parties subject to the provisions of this act.

History: En. Sec. 2, Initiative Measure Nov. 1912; re-en. Sec. 632, R. C. M. 1921; amd. Sec. 1, Ch. 118, L. 1925; amd. Sec. 1, Ch. 3, L. 1927; amd. Sec. 12, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954 effective December 7, 1954); amd. Sec. 1, Ch. 266, L. 1955; amd. Sec. 1, Ch. 274, L. 1959; amd. Sec. 2, Ch. 156, L. 1965.

Amendments

The 1959 amendment deleted a clause which immediately preceded the final clause pertaining to county committeemen and which read, "for the purpose of expressing preferences for candidates for president of the United States."

The 1965 amendment substituted "first Tuesday after the third Monday of August" for "first Tuesday of June" near the beginning of the section.

23-908. (638) Poll-books, precinct register, and tally sheets to be sealed and returned. (1) Immediately after canvassing the votes in the manner aforesaid, the judges and clerks who complete the count, before they separate or adjourn shall inclose the poll-books in separate covers and securely seal the same. They shall also inclose the tally sheets in separate envelopes and seal the same securely. They shall also inclose the precinct registers in separate envelopes and seal the same securely. They shall also envelope all the ballots fastened together, as aforesaid, and seal the same securely; and they shall in writing, with pen and ink, specify the contents, and address each of said packages upon the outside thereof to the county clerk of the county in which the election precinct is situated. These sealed packages of counted ballots shall be marked on the outside, showing what numbers are contained therein, but once sealed they are not to be opened by any one until so ordered by the proper court.

(2) When the count is completed, the ballots counted and sealed, and enveloped and marked for identification as aforesaid, shall be packed in the

two ballot-boxes, and nothing else shall be put into the boxes. The boxes shall then be locked, and the official seal of the board shall be pasted over the keyhole and over the rim of the lid of the box, so that the box cannot be opened without breaking the seal. Thereafter neither the county clerk nor the canvassers making the abstracts of the votes shall break the said seals upon the ballot-boxes, nor shall anyone break the seals on the boxes or the ballots, except upon the order of the proper court in case of contest, or upon the order of the county board when the boxes are needed for the ensuing election.

History: En. Sec. 7, Initiative Measure Nov. 1912; re-en. Sec. 638, R. C. M. 1921; amd. Sec. 6, Ch. 64, L. 1959.

Amendment

The 1959 amendment added the third sentence in subd. (1).

23-909. (639) Political party nominations made exclusively as herein provided. Every political party which has cast three per centum (3%) or more of the total vote cast for representative in Congress at the next preceding general election in the county, district or state for which nominations are proposed to be made, shall nominate its candidates for public office in such county, district or state, under the provisions of this law, and not in any other manner; and it shall not be allowed to nominate any candidate in the manner provided by section 23-801. Every political party and its regularly nominated candidates, members, and officers, shall have the sole and exclusive right to the use of the party name and the whole thereof, and no candidate for office shall be permitted to use any word of the name of any other political party or organization than that of and by which he is nominated. No independent or nonpartisan candidate shall be permitted to use any word of the name of any existing political party or organization in his candidacy. The names of candidates for public office nominated under the provisions of this law shall be printed on the official ballots for the ensuing election as the only candidates of the respective parties for such public office in like manner as the names of the candidates nominated by other methods are required to be printed on such official ballots.

Any political party that did not cast three per centum (3%) or more of the total vote cast for representative in Congress, as above, and any new political party about to be formed or organized, [may] make nominations for public office as provided in section 23-801.

History: En. Sec. 8, Initiative Measure Nov. 1912; re-en. Sec. 639, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1927; amd. Sec. 2, Ch. 266, L. 1955; amd. Sec. 2, Ch. 274, L. 1959.

Amendment

The 1959 amendment deleted several paragraphs setting forth the procedure for a presidential preference primary. For section prior to amendment see parent volume.

23-912. (644) Time for filing petitions for nominations. All petitions for nomination under this act for offices to be filled by the state at large or by any district consisting of more than one (1) county, and nominating petitions for judges of district courts in districts consisting of a single county, shall be filed in the office of the secretary of state not later than five (5) o'clock P. M. on any day not less than forty (40) days before the date of the primary nominating election; and for other offices to be voted

for in only one (1) county, or district or city, every such petition shall be filed with the county clerk or city clerk as the case may be, not later than five (5) o'clock P. M. on any day not less than forty (40) days before the date of the primary nominating election.

History: En. Sec. 13, Initiative Measure Nov. 1912; re-en. Sec. 644, R. C. M. 1921; amd. Sec. 2, Ch. 133, L. 1923; amd. Sec. 1, Ch. 19, L. 1955; amd. Sec. 1, Ch. 38, L. 1961.

Amendment

The 1961 amendment inserted the words "not later than five (5) o'clock P. M. on

any day" both times they appear in the section.

Computation of Time

The decision in *State ex rel. Bevan v. Mountjoy*, 82 M 594, 268 P 558, annotated under this section in the parent volume, was overruled by *State ex rel. Burns v. Lacklen*, 129 M 243, 284 P 2d 998, 1002.

23-926. (659) Notice of contest.

Cross-Reference

Application of Montana Rules of Civil

Procedure to contest of nomination, see M. R. Civ. P., Rule 81(a), Table A.

23-929. (662) County and city central committeemen, how elected. (1) and (2). * * * [Same as parent volume.]

(3) In case of a vacancy happening, on account of death, resignation, removal from the precinct, or otherwise, the remaining members of said county committee may select a committeeman or committeewoman to fill the vacancy and he shall be a resident of the precinct in which the vacancy occurs. Said county and city central committees shall have the power to make rules and regulations for the government of their respective political parties in each county and city, not inconsistent with any of the provisions of this law, and not inconsistent with the rules and regulations of their state political parties, and to elect two (2) county members of the state central committee, one (1) of which shall be a man and one (1) of which shall be a woman, and the members of the congressional committee, and said committee shall have the same power to fill all vacancies and make rules in their jurisdiction that the county committees have to fill county vacancies and to make rules. In the event there is no county central committee in any county the state central committee of the political party having no county central committee in said county shall appoint a county central committee therein to consist of committeemen and committeewomen as herein provided and said county central committee shall have the same powers and duties as county central committee elected, as now provided by law.

(4). * * * [Same as parent volume.]

(5) Prior to the state convention of its political party said committee shall meet, and shall organize by electing a chairman and one (1) or more vice-chairmen, provided that either the chairman or first vice-chairman shall be a woman. They shall also elect a secretary and such other officers as they shall think proper. It shall not be necessary for such officers to be precinct committeemen or committeewomen. They may select managing or executive committees and authorize such subcommittees to exercise any and all powers conferred upon the county, city, state and congressional central committees respectively by this law. The chairman of the county central committee shall call said central committee meeting and not less than four (4) days before the date of said central committee meeting

shall publish said call in a newspaper published at the county seat and shall mail a copy of the call, enclosing a blank proxy, to each precinct committeeman. No proxy shall be recognized unless held by an elector of the precinct of the committeeman executing the same.

(6). * * * [Same as parent volume.]

(7) The county convention shall elect delegates and alternate delegates to attend the state convention under the rules and regulations of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of said delegates.

History: En. Sec. 32, Initiative Measure Nov. 1912; re-en. Sec. 662, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1927; amd. Sec. 1, Ch. 34, L. 1929; amd. Sec. 1, Ch. 6, L. 1933; amd. Sec. 1, Ch. 84, L. 1939; amd. Sec. 1, Ch. 64, L. 1951; amd. Sec. 3, Ch. 266, L. 1955; amd. Sec. 1, Ch. 219, L. 1959; amd. Sec. 7, Ch. 156, L. 1965.

Amendments

The 1959 amendment deleted from the beginning of subd. (5) the words "In each year when a president of the United States is to be elected."

The 1965 amendment inserted "and not inconsistent with the rules and regulations of their state political parties" in the sec-

ond sentence of subsection (3); substituted "Prior to the state convention of its political party said committee shall meet" at the beginning of subsection (5) for "Said committee shall meet within fifteen (15) days after the primary election herein provided for"; changed the time of publication specified in the fifth sentence of subsection (5) from ten to four days before the meeting; and substituted "under the rules and regulations of the state party" at the end of the first sentence of subsection (7) for "provided for herein, in a number equal to the total number of state senators and state representatives elected from said county to the legislative assembly."

23-930. (663) Repealed.

Repeal

This section (Sec. 1, Ch. 1, Ex. L. 1921; Sec. 1, Ch. 159, L. 1925), relating to se-

lection and terms of national committeemen, was repealed by Sec. 11, Ch. 156, Laws 1965.

23-932. (666) Repealed.

Repeal

This section (Sec. 34, Initiative Measure Nov. 1912; Sec. 666, R. C. M. 1921,

Sec. 1, Ch. 8, L. 1953) relating to the formulation of state party platforms, was repealed by Sec. 11, Ch. 156, Laws 1965.

CHAPTER 10—POLITICAL PARTIES

Section 23-1008. Payment of convention expenses.

23-1009. Political parties—authority and power.

23-1002. (673.2) Repealed.

Repeal

This section (Sec. 2, Ch. 126, L. 1927; Sec. 13, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954, effective December 7, 1954); Sec. 4, Ch. 266,

L. 1955), relating to the selection of presidential electors, national convention delegates, precinct committeemen, and state and county party chairmen, was repealed by Sec. 11, Ch. 156, Laws 1965.

23-1006, 23-1007. (673.6, 673.7) Repealed.

Repeal

These sections (Secs. 6, 7, Ch. 126, L. 1927; Sec. 1, Ch. 55, L. 1953; Secs. 14, 15, Ch. 214, L. 1953 (Referendum Measure adopted November 2, 1954, effective De-

cember 7, 1954); Secs. 5, 6, Ch. 266, L. 1955; Sec. 3, Ch. 274, L. 1959), relating to state party conventions, were repealed by Sec. 11, Ch. 156, Laws 1965.

23-1008. (673.8) Payment of convention expenses. The entire expense of conducting the county and state conventions shall be defrayed by the several political parties, except that each elected delegate or alter-

nate who shall attend any state convention which is held for the purpose of nominating presidential electors and participate therein, shall receive the sum of eight (8) cents per mile for each mile actually traveled by him in going to and returning from said convention, said mileage to be computed by the shortest practicable route, and to be paid out of the general funds of the county in the same manner as other election expenses.

History: En. Sec. 8, Ch. 126, L. 1927; amd. Sec. 16, Ch. 214, L. 1953 (Referendum Measure, adopted November 2, 1954 effective December 7, 1954); amd. Sec. 7, Ch. 266, L. 1955; amd. Sec. 8, Ch. 156, L. 1965.

Amendment

The 1965 amendment substituted "any state convention which is held for the purpose of nominating presidential electors" for "the state convention"; and increased the mileage rate from seven to eight cents.

23-1009. Political parties—authority and power. Each political party shall have power to:

- (a) Make its own rules and regulations;
- (b) Provide for and select its own officers;
- (c) Call conventions and provide for the number and qualifications of delegates thereat;
- (d) Adopt platforms;
- (e) Provide for selection of delegates to national conventions;
- (f) Provide for the nomination of presidential electors;
- (g) Provide for the selection of national committeemen and women;
- (h) Make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one (1) county where such vacancies are caused by death, resignation or removal from the electoral district;
- (i) Perform all other functions inherent in such an organization.

History: En. Sec. 1, Ch. 156, L. 1965.

Title of Act

An act relating to the organization of political parties and the selection and election of party nominees and officials; giving political parties the power to make rules and regulations, call conventions, select delegates, adopt platforms, nominate presidential electors, select officers and national committeemen and women, and nominate candidates to fill certain vacancies; amending section 23-902, R. C. M. 1947, to change the date of the primary election; amending section 23-513, R. C. M. 1947, relating to closing of registration and to publishing and posting of notice of the closing of registration; amend-

ing section 23-514, R. C. M. 1947, relating to printing and posting of lists of registered electors; amending section 23-807, R. C. M. 1947, relating to the filing of certain certificates of nomination; amending section 23-809, R. C. M. 1947, relating to the secretary of state's certificate of nomination; amending section 23-929, R. C. M. 1947, relating to county and city central committees; amending section 23-1008, R. C. M. 1947, relating to payment of convention expenses; amending section 23-1117, R. C. M. 1947, relating to the furnishing of ballots to precincts; amending section 23-1611, R. C. M. 1947, relating to voting machines; and repealing sections 23-930, 23-932, 23-1002, 23-1006, 23-1007, R. C. M. 1947.

CHAPTER 11—BALLOTS, PREPARATION AND FORM

Section 23-1117. Number of ballots to be provided for each precinct.

23-1117. (687) Number of ballots to be provided for each precinct. The county clerk must provide for each election precinct in the county sufficient ballots for the electors registered in the precinct. If there is no registry in the precinct, the county clerk must provide ballots equal to the number of electors who voted at the last preceding election in the

precinct, unless in the judgment of the county clerk a greater number be needed, but in no case to exceed one and one-half times as many as the number of registered voters in the precinct. He must keep a record in his office, showing the exact number of ballots, that are delivered to the judges of each precinct. In municipal elections it is the duty of the city clerk to provide ballots as specified in this section.

History: Ap. p. Sec. 1355, Pol. C. 1895; amd. Sec. 3, Ch. 88, L. 1907; re-en. Sec. 546, Rev. C. 1907; re-en. Sec. 687, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1925; amd. Sec. 9, Ch. 156, L. 1965. Cal. Pol. C. Sec. 1199.

Amendment

The 1965 amendment substituted "sufficient ballots for the electors" in the first sentence for "ten more than an equal number of ballots as there are electors."

CHAPTER 12—CONDUCTING ELECTIONS—THE POLLS—VOTING AND BALLOTS

- Section 23-1210. Method of voting.
 23-1213. Judges may aid disabled elector.
 23-1219. List of voters.

23-1210. (696) Method of voting. On receipt of his ballot the elector must forthwith, without leaving the polling-place and within the guard-rail provided, and alone, retire to one of the places, booths, or compartments, if such are provided, and prepare his ballot. He shall prepare his ballot by marking an "X" in the square before the name of the person or persons for whom he intends to vote. In case of a ballot containing a constitutional amendment, or other question to be submitted to the vote of the people, by marking an "X" in the square before the answer of the question or amendment submitted. The elector may write in the blank space or paste over any other name the name of any person for whom he wishes to vote, and vote for such person by marking an "X" before such name. No elector is at liberty to use or bring into the polling-place any unofficial sample ballot. After preparing his ballot the elector must fold it so the face of the ballot will be concealed and so that the indorsements stamped thereon may be seen, and hand the same to the judges in charge of the ballot-box, who shall announce the name of the elector and the printed or stamped number on the stub of the official ballot so delivered to him, in a loud and distinct tone of voice. If such elector be entitled then and there to vote, and if such printed or stamped number is the same as that entered on the poll-books as the number on the stub of the official ballot last delivered to him by the ballot judge, such judge shall receive such ballot, and, after removing the stub therefrom in plain sight of the elector, and without removing any other part of the ballot, or in any way exposing any part of the face thereof below the stub, shall deposit each ballot in the proper ballot-box for the reception of voted ballots, and the stubs in a box for detached ballot stubs. Upon voting, the elector shall forthwith pass outside the guard-rail, unless he be one of the persons authorized to remain within the guard-rail for other purposes than voting.

History: Ap. p. Sec. 24, p. 142, L. 1889; amd. Sec. 1361, Pol. C. 1895; amd. Sec. 1361, p. 119, L. 1901; amd. Sec. 5, Ch. 88, L. 1907; re-en. Sec. 552, Rev. C. 1907; re-en. Sec. 696, R. C. M. 1921; amd. Sec. 7, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1205.

Amendment

The 1959 amendment in the next to the last sentence of this section substituted "poll-books" for "poll-list."

23-1213. (699) Judges may aid disabled elector. Any elector who declares to the judges of election, or when it appears to the judges of election that he cannot read or write, or that because of blindness or other physical disability he is unable to mark his ballot, but for no other cause, must, upon request, receive the assistance of two of the judges, who shall represent different parties, in the marking thereof, and said disabled elector may request that any qualified elector whom he designates to the judges, and in whom he has trust and confidence, shall also be permitted to aid him in the marking of his ballot, and such judges must certify on the official register opposite name of such disabled elector that it was so marked with their assistance, and indicate the name of the person if any of whom he requested and received assistance, and neither the judges nor, if such is the case, the person who aided him, must thereafter give information regarding the same. The judges must require such declaration of disability to be made by the elector under oath before them, and they are hereby authorized to administer the same. No elector other than the one who may, because of his inability to read or write, or of his blindness or physical disability, be unable to mark his ballot, must divulge to any one within the polling-place the name of any candidate for whom he intends to vote, or, other than herein specifically allowed, ask or receive the assistance of any person within the polling-place in the preparation of his ballot.

History: Ap. p. Sec. 27, p. 142, L. 1889; amd. Sec. 1364, Pol. C. 1895; amd. Sec. 1364, p. 120, L. 1901; re-en. Sec. 555, Rev. C. 1907; re-en. Sec. 699, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1959; amd. Sec. 1, Ch. 77, L. 1961. Cal. Pol. C. Sec. 1208.

Amendments

The 1959 amendment added provisions that disabled elector may request qualified elector whom he designates to judges and in whom he has trust to aid him in marking his ballot.

The 1961 amendment substituted the last part of the first sentence, beginning with the words, "and said disabled elector may request," for the following: "or said disabled elector may request that any qualified elector whom he designates to the judges, and in whom he has trust and

confidence, aid him in the marking of his ballot, and such judges must certify on the outside thereof that it was so marked with their assistance, or the name of the person of whom he requested and received assistance, and neither the judges nor, if such is the case, the person who aided him, must thereafter give information regarding the same."

Repealing Clause

Section 2 of Ch. 32, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 32, Laws 1959 provided the act should be in effect immediately upon its passage and approval. Approved February 25, 1959.

23-1219. (705) List of voters. Each clerk must keep a list of persons voting, and the name of each person who votes must be entered thereon and numbered in the order voting. Such list is known as the poll-book.

History: En. Sec. 1370, Pol. C. 1895; re-en. Sec. 561, Rev. C. 1907; re-en. Sec. 705, R. C. M. 1921; amd. Sec. 8, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1229.

Amendment

The 1959 amendment in the last sentence substituted the words "poll-book" for the words "poll-list and forms a part of the poll-book of the precinct."

CHAPTER 13—VOTING BY ABSENT ELECTORS

Section 23-1301. Voting by elector when absent from place of residence or physically incapacitated from going to polls.

23-1302(1), 23-1302(2). Application of absentee or physically incapacitated person for ballot.

- 23-1303. Form of application.
- 23-1303.1. Forms and regulations for absentee voting in school district elections.
- 23-1306. Mailing ballot to elector—form of return and affidavit.
- 23-1307. Marking and swearing to ballot by elector.
- 23-1309. Delivery or mailing of ballots to election judges.
- 23-1311. Duty of election judges—poll-books, numbering ballots and rejected ballots.
- 23-1312. Voting before election day by prospective absentee or physically incapacitated elector.
- 23-1313. Envelopes containing ballots—deposit in box and rejection of ballot.
- 23-1320. Duty of elector if present on election day.

23-1301. (715) Voting by elector when absent from place of residence or physically incapacitated from going to polls. Any qualified elector of this state, having complied with the laws in regard to registration, who is absent from the county or who is physically incapacitated from attending the precinct poll of which he is an elector on the day of holding any general or special election, or primary election for the nomination of candidates for such general election, or any municipal, school, general, special or primary election, may vote at any such election as hereinafter provided.

History: En. Sec. 1, Ch. 110, L. 1915; amd. Sec. 1, Ch. 155, L. 1917; re-en. Sec. 715, R. C. M. 1921; amd. Sec. 1, Ch. 234, L. 1943; amd. Sec. 1, Ch. 108, L. 1963.

Amendment

The 1963 amendment inserted "school" before "general, special or primary election" near the end of the section.

23-1302(1). (716) Application of absentee or physically incapacitated person for ballot. At any time within the period beginning forty-five (45) days next preceding such election and ending at 12 noon on the day next preceding the day of election, any elector expecting to be absent on the day of election from the county in which his voting precinct is situated, or any elector in United States service, or any elector who as a result of physical incapacity, in all probability will be unable to attend his voting precinct poll as made to appear by the certificate of a physician licensed under the laws of Montana, plainly stating the nature of the physical incapacity of the applicant, and certifying (a) that such incapacity will continue beyond the day of the election for which the application is made; (b) to the extent of reasonably preventing applicant from going to the polls, bodily health considered, may make application to the county clerk of such county, or to the city or town clerk, in the case of a municipal, general, or primary election, for an official ballot or official ballots to be voted at such election as an absent or physically incapacitated voter's ballot or ballots.

History: En. Sec. 2, Ch. 110, L. 1915; re-en. Sec. 2, Ch. 155, L. 1917; re-en. Sec. 716, R. C. M. 1921; amd. Sec. 2, Ch. 234, L. 1943; amd. Sec. 1, Ch. 104, L. 1953; amd. Sec. 3, Ch. 18, L. 1959; amd. Sec. 2, Ch. 124, L. 1963.

amendment and in some respects the section was amended differently by each chapter. The section above is as amended by Ch. 18. The section as amended by Ch. 216 is set out as section 23-1302(2).

Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 18 and once by Ch. 216. Chapter 18 was approved by the Governor, February 6, 1959 while Chapter 216 was approved March 11, 1959. Neither amendment mentioned the other

Amendments

The 1959 amendment by Ch. 18 of Laws 1959 substituted the word "elector" for the word "voter" which appeared after the words "days next preceding such election, any" and substituted the phrase "any elector in United States service, or any elector" for the phrase "or serving in

the armed services of the United States or in the merchant marines of the United States, or who is a civilian outside the United States officially attached to and serving with the armed forces of the United States."

The 1963 amendment inserted the words "the period beginning" preceding the words "forty-five (45) days" and the phrase "and ending at 12 noon on the day next preceding the day of election" following the words "preceding such election."

23-1302(2). (716) Application of absentee or physically incapacitated person for ballot. At any time within forty-five (45) days next preceding such election, any voter expecting to be absent on the day of election from the county in which his voting precinct is situated, for any reason whatsoever, or who as a result of physical incapacity, in all probability will be unable to attend his voting precinct poll as made to appear by his affidavit, plainly stating the nature of the physical incapacity of the applicant, and stating (a) that such incapacity will continue beyond the day of the election for which the application is made; (b) to the extent of reasonably preventing applicant from going to the polls, bodily health considered, may make application to the county clerk of such county, or to the city or town clerk, in the case of a municipal, general, or primary election, for an official ballot or official ballots to be voted at such election as an absent or physically incapacitated voter's ballot or ballots.

History: En. Sec. 2, Ch. 110, L. 1915; re-en. Sec. 2, Ch. 155, L. 1917; re-en. Sec. 716, R. C. M. 1921; amd. Sec. 2, Ch. 234, L. 1943; amd. Sec. 1, Ch. 104, L. 1953; amd. Sec. 1, Ch. 216, L. 1959.

as amended by Ch. 18 is set out as section 23-1302(1).

Amendment

The 1959 amendment by Ch. 216 of Laws 1959 substituted "for any reason whatsoever" for "or serving in the armed services of the United States or in the merchant marines of the United States, or who is a civilian outside the United States officially attached to and serving with the armed forces of the United States"; substituted "his affidavit" for "the certificate of a physician licensed under the laws of Montana" and substituted "stating" for "certifying."

Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 18 and once by Ch. 216. Chapter 18 was approved by the Governor, February 6, 1959 while Chapter 216 was approved March 11, 1959. Neither amendment mentioned the other amendment and in some respects the section was amended differently by each chapter. The section above is as amended by Ch. 216. The section

23-1303. (717) Form of application. Application for such ballots shall be made on a blank furnished by the county clerk of the county of which the applicant is an elector, or the city or town clerk, if it be municipal, general, special or primary election, and shall be in substantially the following form:

"I, _____, a duly qualified elector of the _____ precinct, in the county of _____, and State of Montana, and am to the best of my knowledge and belief entitled to vote in such precinct in the next election, expecting to be absent from said county or, in all probability, to be physically incapacitated from going to my precinct poll on the day for holding such election, hereby make application for an official ballot to be voted by me at the said election.

Post office address to which ballot is to be mailed _____

State of _____ }
 County of _____ } ss.

On this _____ day of _____, personally appeared before me _____, who being first duly sworn, deposes and says that he is the person who signed the foregoing application, that he has read and knows the contents of same and knows to his own knowledge the matters and things therein stated are true.

This application must be subscribed by the applicant and sworn to before some officer authorized to administer oaths, pursuant to the laws of the place of execution, and the application shall not be deemed complete without this affidavit.

Provided that application for such ballot by any elector in the United States may be made by the federal post card application, or by any written request, signed by said applicant, addressed to the county clerk of the county of residence of said elector.

History: En. Sec. 3, Ch. 110, L. 1915; re-en. Sec. 3, Ch. 155, L. 1917; re-en. Sec. 717, R. C. M. 1921; amd. Sec. 1, Ch. 151, L. 1923; amd. Sec. 1, Ch. 32, L. 1941; amd. Sec. 3, Ch. 234, L. 1943; amd. Sec. 2, Ch. 104, L. 1953; amd. Sec. 1, Ch. 152, L. 1955; amd. Sec. 4, Ch. 18, L. 1959; amd. Sec. 2, Ch. 216, L. 1959.

ment mentioned the other act and as the acts amended the section in different respects, the compiler has made a composite section, incorporating the changes made by each act.

Amendments

The 1959 amendment by Ch. 18 substituted the present last paragraph for the former last paragraph for text of which see parent volume.

The 1959 amendment by Ch. 216 inserted the words "pursuant to the laws of the place of execution" in the next to the last paragraph.

Compiler's Note

This section was amended twice by the 1959 legislature. Once by Ch. 18, Laws 1959 and once by Ch. 216, Laws 1959. Chapter 18 was approved by the Governor, February 6, 1959 while Ch. 216 was approved March 11, 1959. Neither amend-

23-1303.1. Forms and regulations for absentee voting in school district elections. The state superintendent of public instruction shall prepare the form of application for absentee voter ballot for school districts and such other forms and regulations as may be necessary to carry out the purpose of this act, as it pertains to school districts.

History: En. Sec. 3, Ch. 108, L. 1963.

23-1306. (720) Mailing ballot to elector—form of return and affidavit. Upon receipt of such application, properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been printed, the said county or city or town clerk shall send to such elector by mail, postage prepaid, one official ballot, or if there be more than one ballot to be voted by an elector of such precinct, one of each kind, and shall inclose with such ballot or ballots an envelope, to be fur-

nished by such county or city or town clerk, which envelope shall bear upon the front thereof the name, official title and post office address of such county or city or town clerk, and upon the other side a printed affidavit, in substantially the following form:

"State of _____ }
County _____ } ss.

I, _____, do solemnly swear that I am a resident of the _____ precinct, (and if he be a resident of a city or town, Add: 'Residing at _____, in the town or city of _____'), County of _____ and State of Montana, and entitled to vote in such precinct at the next election; that I expect to be absent from the said county of my residence or, in all probability, to be physically incapacitated from going to my precinct poll on the day of holding such election and that I will have no opportunity to vote in person on that day.

Subscribed and sworn to before me this _____ day of _____, 19____; and I hereby certify that the affiant exhibited to me the enclosed ballot or ballots for inspection before marking, and that the same was (or were) then unmarked and that he then in my presence, and in the presence of no other person, and in such manner that I could not see his vote, marked said ballot (or ballots) and inclosed and sealed the same in this envelope. That the affiant was not solicited or advised by me to vote for or against any candidate or measure.

Both the envelope in which the ballot is mailed to the elector in the United States service and the return envelope enclosed therein shall have printed across the face two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope, and with the words "Official Election Balloting Material—via Air Mail," or similar language, between the bars; that there be printed in the upper right corner of each such envelope, in a box, the words "Free of U. S. Postage, Including Air Mail"; that all printing on the face of each such envelope be in red; and that there be printed in red in the upper left corner of each state ballot envelope an appropriate inscription or blanks for return address of sender.

The return envelope shall be self-addressed to the county or city or town clerk.

The county or city or town clerk shall enclose with the ballot mailed to the elector in the United States service instructions for voting and returning the ballot.

History: En. Sec. 6, Ch. 110, L. 1915, amd. Sec. 6, Ch. 155, L. 1917; re-en. Sec. 720, R. C. M. 1921; amd. Sec. 5, Ch. 234, L. 1943; amd. Sec. 5, Ch. 18, L. 1959.

Amendment
The 1959 amendment added the last three paragraphs of this section.

23-1307. (721) Marking and swearing to ballot by elector. Such voter shall make and subscribe the said affidavit before an officer authorized by law to administer oaths, pursuant to the laws of the place of execution and may do so at any place including any foreign country, before any officer authorized by the laws of the place of execution to take acknowledgments of instruments, and such voter shall thereupon, in the presence of such officer and of no other person, mark such ballot or ballots, but in such manner that such officer cannot see the vote, and such ballot or ballots thereupon, in the presence of such officer, shall be folded by such voter so that each ballot shall be separate, and so as to conceal the vote, and shall be, in the presence of such officer, placed in such envelope securely sealed. Said officer shall thereupon append his signature and official title at the end of said jurat and affidavit. Said envelope shall be mailed by such absent or physically incapacitated voter, postage prepaid, or delivered to the county or city or town clerk, as the case may be.

History: En. Sec. 7, Ch. 110, L. 1915; amd. Sec. 7, Ch. 155, L. 1917; re-en. Sec. 721, R. C. M. 1921; amd. Sec. 3, Ch. 151, L. 1923; amd. Sec. 6, Ch. 234, L. 1943; amd. Sec. 1, Ch. 60, L. 1953; amd. Sec. 3, Ch. 216, L. 1959.

Amendment

The 1959 amendment substituted the words "pursuant to the laws of the place of execution" for "and who has an official seal"; substituted "including any foreign

country" for "in the state of Montana, or in any other state or territory of the United States"; substituted "of the place of execution" for "without the state" and deleted the words "and affix his seal" which appeared after the words "and official title."

Repealing Clause

Section 4 of Ch. 216, Laws 1959 repealed all acts and parts of acts in conflict therewith.

23-1309. (723) Delivery or mailing of ballots to election judges. In case such envelope is received by such clerk prior to the delivery of the official ballots to a judge of election of the precinct in which such absent or physically incapacitated voter resides, said larger envelope, containing the said voter's envelope, and his said application as above provided, shall be delivered to the judge of election of such precinct, to whom the official ballots of the precinct shall be delivered, and at the same time. In case the official ballots for such precinct shall have been delivered to the judge of election prior to the time of the receipt by the said clerk of said absent or physically incapacitated voter's envelope, such clerk shall immediately after inclosing such voter's envelope and his application in a larger envelope, and after endorsing the latter as provided in the foregoing section, address and mail the larger envelope, postage prepaid, to the said judge of election of said precinct, as hereinafter further provided. If any absentee ballots are received by the clerk for which application was made after 12 noon on the day next preceding an election, the clerk shall endorse upon the voter's envelope the date and exact time of receipt and the words "To be rejected by authority of section 23-1309, R.C.M. 1947." Absentee ballots endorsed in this manner shall be delivered to the judge of election of said precinct and shall be rejected by the judge of election.

History: En. Sec. 9, Ch. 110, L. 1915; re-en. Sec. 9, Ch. 155, L. 1917; re-en. Sec. 723, R. C. M. 1921; amd. Sec. 8, Ch. 234, L. 1943; amd. Sec. 1, Ch. 124, L. 1963.

Amendment

The 1963 amendment added the third and fourth sentences to this section.

23-1311. (725) Duty of election judges—poll-books, numbering ballots and rejected ballots. The judges of election, at the opening of the polls, shall note on the poll-books opposite the numbers corresponding to the numbers of the ballots issued to absent or physically incapacitated voters, as shown by the certificate of the county or city or town clerk, the fact that such ballots were issued to absent or physically incapacitated voters, and shall reserve said numbers for the absent or physically incapacitated voters. The notation may be made by writing the words "absent or physically incapacitated voters" opposite such numbers.

The judges shall not allow any names to be inserted in the poll-books on the lines corresponding to said numbers, except the name of the elector entitled to each particular number according to the certificate of the county or city or town clerk, and the number of his ballot. Any so rejected shall be placed together with the voter's application and the absent or physically incapacitated voter's envelope provided for the purpose by the clerk and recorder or city or town clerk, which shall be sealed and endorsed by the words, "rejected absent or physically incapacitated voter ballots" numbered -----, and shall put thereon the number of the ballots given to absent or physically incapacitated voters according to the county or city or town clerk's certificate. There shall be a separate enclosing envelope for the ballot or ballots of each absent or physically incapacitated voter whose ballot or ballots may have been rejected, and such envelopes shall be placed in an envelope together with the other ballots, and shall not be opened without order of a court of competent jurisdiction.

History: En. Sec. 11, Ch. 110, L. 1915; amd. Sec. 11, Ch. 155, L. 1917; re-en. Sec. 725, R. C. M. 1921; amd. Sec. 10, Ch. 234, L. 1943; amd. Sec. 9, Ch. 64, L. 1959.

Amendment

The 1959 amendment in the first sentence substituted "poll-books" for "poll-lists, when one is required by law to be kept" and in the first sentence of the second paragraph substituted "poll-books" for "poll-list."

23-1312. (726) Voting before election day by prospective absentee or physically incapacitated elector. Any qualified elector who is present in his county after the official ballots of such county or school district have been printed and who has reason to believe that he will be absent from such county or school district on election day, or physically incapacitated as provided in section 23-1302 may vote before he leaves his county or school district or prior to the inception of such physical incapacity, in like manner as an absent or physically incapacitated voter, before the county or city or town clerk or school district clerk, or some officer authorized to administer oaths and having an official seal; and the provisions of this act shall be deemed to apply to such voting. If the ballot be marked before the county or city or town or school district clerk it shall be his duty to deal with it in the same manner as if it had come by mail.

History: En. Sec. 12, Ch. 110, L. 1915; amd. Sec. 12, Ch. 155, L. 1917; re-en. Sec. 726, R. C. M. 1921; amd. Sec. 11, Ch. 234, L. 1943; amd. Sec. 2, Ch. 108, L. 1963.

Amendment

The 1963 amendment extended this sec-

tion to school district elections by inserting "or school district" after "county" in three places in the first sentence, by inserting "or school district clerk" after "town clerk" in the first sentence, and by inserting "or school district" between "town" and "clerk" in the second sentence.

23-1313. (727) Envelopes containing ballots—deposit in box and rejection of ballot. At any time between the opening and closing of the polls on such election day, the judges of election of such precinct shall first open the outer envelope only, and compare the signature of such voter to such application, with the signature to such affidavit.

In case the judge finds the affidavit is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct, and has not voted at such election, they shall open the absent or physically incapacitated voter's envelope, in such manner as not to destroy the affidavit thereon, and take out the ballot or ballots therein contained, and without unfolding the same, or permitting the same to be opened or examined, shall ascertain whether the stub or stubs is or are still attached to the ballot or ballots, and whether the number thereon corresponds to the number in the county or city or town clerk's certificate. If so, they shall endorse the same in like manner that other ballots are endorsed, shall detach the stub as in other cases, and deposit the ballot or ballots in the proper ballot-box or boxes, and make in their election records the proper entries to show such elector to have voted. In case such affidavit is found to be insufficient, or that the said signatures do not correspond, or that such applicant is not then a duly qualified elector of such precinct, such vote shall not be allowed, but, without opening the absent or physically incapacitated voter envelope, the judges of such election shall mark across the face thereof "rejected as defective" or "rejected as not an elector" as the case may be. The absent or physically incapacitated voter envelope, when such absent vote or vote by a person physically incapacitated from going to the polls is voted, and the absent or physically incapacitated voter envelope with its contents, unopened, when such absent vote or vote by a person physically incapacitated from going to the polls is rejected, shall be deposited in the ballot-box containing the general or party ballots, as the case may be, retained and preserved in the manner by law provided for the retention and preservation of official ballots voted at such election. If, upon opening the absent or physically incapacitated voter's envelope, it be found that the stub of any ballot has been detached, or that the number thereon does not correspond to the number in the county or city or town clerk's certificate of the number issued to such absent or physically incapacitated voter, the ballot shall be rejected, and it shall then and there, and without looking at the face thereof, be marked on the back "rejected on the ground of _____," filling the blank with the statement of the reason of the rejection; which statement shall be dated and signed by the majority of the judges. The ballot or ballots so rejected, together with the absent or physically incapacitated voter's envelope bearing the application, and the said application, shall be all enclosed in an envelope, which shall be then and there securely sealed, and on such envelope the judges shall write or cause to be written (if not already printed thereon) the words, "rejected ballot of absent or physically incapacitated voter" (writing in the name of the elector). "The rejected ballot or ballots is or are _____." The judges shall designate the rejected ballot as "general ballot," if it be a ballot for candidates that be rejected. If the rejected ballot be a one put on a question submitted to

the vote of the electors, the judges shall designate such ballot as ballot question No. _____ in the certificate on the envelope. There shall be a separate enclosing envelope for the ballot or ballots of each absent or physically incapacitated voter whose ballot or ballots may have been rejected and such enclosing envelope shall be placed in the envelope in which the other ballots voted or (are) required to be placed and shall not be opened without an order of a court of competent jurisdiction. The county or city or town clerk shall provide and have delivered to the judge of election suitable envelopes for enclosing rejected absent or physically incapacitated voter's ballots.

History: En. Sec. 13, Ch. 110, L. 1915; amd. Sec. 13, Ch. 155, L. 1917; re-en. Sec. 727, R. C. M. 1921; amd. Sec. 12, Ch. 234, L. 1943; amd. Sec. 10, Ch. 64, L. 1959.

Amendment

The 1959 amendment, in the second sentence of the second paragraph substituted the words "election records" for the words "election list and books."

23-1320. (734) Duty of elector if present on election day. In case any elector who shall have taken advantage of the provisions of this act, and marked his ballot as an absent or physically incapacitated voter, as in this act provided, shall not leave his county, or shall return thereto or shall have recovered physical capacity to go to the polls on or before election day, and in time to allow him to go to the polls, to-wit, to the voting place in his precinct, and to be admitted therein before the close of the polls, if shall be his duty so to go to the said voting place and to present himself to the judges of election at said voting place, and if he shall wilfully neglect so to do he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred (\$100.00) dollars or by imprisonment not more than thirty (30) days in the county jail or by both such fine and imprisonment. If such an elector so appears the judges of election shall note in the precinct register the fact of his appearance as well as whether or not he voted in person.

History: En. Sec. 20, Ch. 110, L. 1915; re-en. Sec. 20, Ch. 155, L. 1917; re-en. Sec. 734, R. C. M. 1921; amd. Sec. 17, Ch. 234, L. 1943; amd. Sec. 11, Ch. 64, L. 1959.

Amendment

The 1959 amendment in the last sentence of this section substituted "precinct register" for "poll-books and lists."

CHAPTER 14—VOTING BY ABSENT ELECTORS IN UNITED STATES SERVICE

- Section 23-1401. Registration of absent electors in United States service.
- 23-1402. Definition of electors in United States service.
- 23-1403. The federal post card application.
- 23-1404. Oath for elector in the United States service.
- 23-1405. Classification of federal post card application.

23-1401. Registration of absent electors in United States service. Any elector of this state in the United States service who is absent from the state of Montana and the county of which he or she is a resident shall be entitled to register by mailing to the county clerk a federal post card application filled out and signed under oath, which shall be the "OFFICIAL WAR REGISTRATION CARD" of the state.

History: En. Sec. 1, Ch. 99, L. 1943; **Amendment**
amd. Sec. 6, Ch. 18, L. 1959.

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

23-1402. Definition of electors in United States service. The phrase "elector in United States service" as used in the Revised Codes of Montana of 1947, as amended, shall include the following:

- (1) Members of the armed forces while in the active service, and their spouses and dependents.
- (2) Members of the merchant marine of the United States, and their spouses and dependents.
- (3) Civilian employees of the United States in all categories serving outside the territorial limits of the several states of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them, whether or not the employee is subject to the civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.
- (4) Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces, and their spouses and dependents.

History: En. Sec. 2, Ch. 99, L. 1943; **Amendment**
amd. Sec. 7, Ch. 18, L. 1959.

The 1959 amendment completely rewrote this section. For text of section prior to amendment see parent volume.

23-1403. The federal post card application. The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be as follows:

- (a) The cards shall be approximately nine and one-half ($9\frac{1}{2}$) by four and one-eighth ($4\frac{1}{8}$) inches in size.
- (b) Upon one side, perpendicular to the long dimension of the card, there shall be printed in black type the following:

FILL OUT BOTH SIDES OF CARD
POST CARD APPLICATION FOR ABSENTEE BALLOT

State or Commonwealth of _____

(Fill in name of State or Commonwealth)

- (1) I hereby request an absentee ballot to vote in the coming election:

(GENERAL) (PRIMARY)* (SPECIAL) ELECTION

(Strike out inapplicable words)

- (2) *If a ballot is requested for a primary election, print your political party affiliation or preference in this box: ☐

(If primary election is secret in your state, do not answer).

- (3) I am a citizen of the United States, eligible to vote in above state, and am:

- a. A member of the armed forces of the United States ☐
- b. A member of the merchant marine of the United States ☐

- c. A member of a religious or welfare organization assisting service-men ☐
- d. A civilian employed by the United States government outside the United States (continental) ☐
- e. A spouse or dependent of a person listed in (a), (b), or (c) above ☐
- f. A spouse or dependent residing with a person described in (d) above ☐

(4) I was born on _____
(Day) (Month) (Year)

(5) For _____ years preceding the above election my home (not military) residence in the above state has been _____

(Street and number or rural route, etc.)

The voting precinct or election district for this residence is _____

(Enter if known)

(6) Remarks: _____

(7) Mail my ballot to the following official address: _____

(Unit (Co., Sq., Trp., Bn., Etc.), Governmental Agency or Office)

(Military Base, Station, Camp, Fort, Ship, Airfield, etc.)

(Street, Street No., APO, or FPO No.)

(City, Postal Zone, and State)

(8) I am NOT requesting a ballot from any other state and am not voting in any other manner in this election, except by absentee process, and have not voted and do not intend to vote in this election at any other address.

(9) _____
(Signature of person requesting ballot)

(10) _____
(Full name, typed or printed, with rank or grade, and service number)

(11) Subscribed and sworn to before me on _____
(Day, month and year)

(Signature of official
administering oath)

(Typed or printed
name of official
administering oath.)

(Title or rank, service number and organization of administering official)

INSTRUCTIONS

- A. Before filling out this form see your voting officer in regard to the voting laws of your state and absentee registration and voting procedure.
- B. Type or print all entries except signatures. FILL OUT BOTH SIDES OF CARD.
- C. Address card to proper state official. Your voting officer or commanding officer will furnish you with his title and address.
- D. Mail card as soon as your state will accept your application.
- E. No postage is required for the card.

(c) Upon the other side of the card there shall be printed in red type the following:

FILL OUT BOTH SIDES OF THE CARD

(Name)

FREE OF U. S. POSTAGE
Including Air Mail

(Unit, Gov't Agency, or Office)

(Mil. Base, Station, Ship or Office)

(Street No., APO, or FPO No.)

(City, Postal Zone, State)

OFFICIAL ELECTION BALLOTING MATERIAL—VIA AIR MAIL

To: -----
(Title of election official)

(County or township)

(City or Town, State)

History: En. Sec. 3, Ch. 99, L. 1943; Amendment
amd. Sec. 8, Ch. 18, L. 1959.

The 1959 amendment completely re-
wrote this section. For section prior to
amendment see parent volume.

23-1404. Oath for elector in the United States service. Any oath required for electors in the United States service to register, request a ballot or vote may be administered and attested, within or without the United States, by any commissioned officer in the active service of the armed forces, or any member of the merchant marine of the United States designated for this purpose by the secretary of commerce, or any civilian official empowered by state or federal law to administer oaths. No official seal

need be affixed to said oath and neither the elector nor the certifying officer need disclose his whereabouts at the time of taking said oath except to the extent required by the federal post card application.

History: En. Sec. 4, Ch. 99, L. 1943; **Amendment**
amd. Sec. 9, Ch. 18, L. 1959.

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

23-1405. Classification of federal post card application. Upon receipt by the county clerk of a federal post card application properly filled out and signed under oath, the county clerk shall classify such federal post card application according to the precinct in which the elector resides, and shall arrange the cards in each precinct in alphabetical order. The county clerk shall, upon receipt of any federal post card application, immediately enter upon the official register of the county in the proper precinct the full information given by said elector. Immediately upon entry upon the official register of the county of the name of the elector in the United States service the county clerk shall send to him or her by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days next preceding the election another federal post card application to his county clerk or city clerk or town clerk.

History: En. Sec. 5, Ch. 99, L. 1943; **Amendment**
amd. Sec. 10, Ch. 18, L. 1959.

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

CHAPTER 16—VOTING MACHINES—CONDUCT OF ELECTION WHEN USED

Section 23-1608. . . City and county clerks to set up machines for use.

23-1608A. Ballot—arrangement on machine.

23-1611. Election returns.

23-1608. (764) City and county clerks to set up machines for use.

(1) The city or county clerks of each city or county in which a voting machine is to be used shall cause the proper ballots to be put upon each machine corresponding with the sample ballots herein provided for, and the machines in every way put in order, set and adjusted ready for use in voting when delivered at the precinct, and for the purpose of so labeling the machines, putting in order, setting and adjusting the same, they may employ one or more competent persons, and they shall cause the machine so labeled, in order and set and adjusted, to be delivered at the voting precinct, together with all necessary furniture and appliances that go with the same in the room where the election is to be held in the precinct, in time for the opening of the polls on election day; provided, however, that a shield of tin painted black made to conform with the shape of the keys or levers on said voting machine, shall be placed over the keys or levers not in use on the face of the ballot of the voting machine; said shields to be plainly marked with the words "not in use."

(2) In primary elections a separate row or column shall be assigned to each political party and at least one row or column shall separate the rows assigned to the two major political parties as defined in

section 23-1107, Revised Codes of Montana, 1947. In this row or column shall be placed the nonpartisan judicial ballot. In general elections the ballot on the voting machines shall be arranged and the names of the candidates for each office rotated to conform as nearly as possible to the requirements for paper ballots set forth in section 23-1107, Revised Codes of Montana, 1947. The names of the candidates of the two major parties as defined in section 23-1107, Revised Codes of Montana, 1947, shall appear in and be rotated between the first two horizontal rows or vertical columns, and the names of the candidates of minor parties and independent candidates shall appear in and be rotated between succeeding rows or columns; provided, however, that the arrangement of the ballot shall be uniform on all machines in the same precinct. The party designation of each candidate shall be printed after or below his name in type as large as the design of the machine will allow.

(3) The nonpartisan judicial ballot shall be placed in the first two horizontal or vertical rows or columns in the same position as prescribed for judicial candidates in section 23-1111, Revised Codes of Montana, 1947. [Continued on page 241.]

INITIATIVES, REFERENDUMS AND CONSTITUTIONAL AMENDMENTS	CONSTITUTIONAL AMENDMENT				
OFFICES	FOR PRESIDENTIAL ELECTORS TO VOTE FOR PRESIDENT AND VICE PRESI- DENT OF THE UNITED STATES Vote for one	UNITED STATES SENATOR Vote for one	REPRESENT- ATIVE IN CONGRESS Vote for one	GOVERNOR Vote for one	
CANDIDATES	Democrat JOHN DOE for President ALBERT ORE for Vice President John Doe, Ella Moe, Jane Roe, Tom Voe	TOM COE Republican	JOHN DOE Democrat	BILL COE Republican	(Same for Lieutenant Governor, Secretary of State, Attorney General, State Treas- urer, State Auditor, Railroad and Public Service Commission- ers, State Superin- tendent of Public In- struction, Clerk of the Supreme Court, Chief Justice of the Supreme Court, As- sociate Justice of the Supreme Court and District Judges)
CANDIDATES	Republican FRANK MOE for President HARRY COE for Vice President Jane Doe, John Moe, Tom Roe, John Voe	JACK MOE Democrat	MIKE ORE Republican	TOM ROE Democrat	
CANDIDATES		JOE ROE Socialist			
CANDIDATES					

(4) The judges shall compare the ballots on the machine with the sample ballot, see that they are correct, examine and see that all the counters, if any, in the machine are set at zero, and that the machine is otherwise in perfect order, and they shall not thereafter permit the machine to be operated or moved except by electors in voting, and they shall also see that all necessary arrangements and adjustments are made for voting irregular ballots on the machine, if such machine be so arranged.

History: En. Sec. 8, Ch. 168, L. 1907; Sec. 616, Rev. C. 1907; amd. Sec. 2, Ch. 246, L. 1921; re-en. Sec. 764, R. C. M. 1921; amd. Sec. 1, Ch. 20, L. 1959.

subds. (2) and (3); and deleted from the end of present subd. (1) a proviso for a blank row of keys between the major parties and a proviso and a sentence requiring that parties be listed on machines in the same order as on paper ballots.

Amendment

The 1959 amendment divided the section into subdivisions; inserted present

23-1608A. Ballot—arrangement on machine. The arrangement of the general election ballot on voting machines with horizontal rows shall be, as nearly as possible, in the following form:

[See double-page form below.]

FOR AGAINST		INITIATIVE NO. 1					FOR AGAINST
STATE SENATOR Vote for one	MEMBER OF THE HOUSE OF REPRESENTATIVES Vote for four					COUNTY COMMIS- SIONER Vote for one	(Same for all County and Town- ship offices.)
	JOE COE Republican	JACK BOE Democrat	PETE COE Democrat	BILL DOE Republican	FRANK HOE Democrat	JOHN DOE Democrat	
	TOM DOE Democrat	ALLEN JOE Republican	OLE KOE Republican	JOHN MOE Democrat	EARL ROE Republican	MIKE ROE Republican	
		MIKE FOE Independent	JIM GOE Socialist	BILL LOE Prohibition			

The arrangement of the general election ballot on voting machines with vertical columns shall be, as nearly as possible, in the following form:

Offices	Candidates	Candidates	Candidates	Candidates	Initiatives, Referendums and Constitutional Amendments
FOR PRESIDENTIAL ELECTORS TO VOTE FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES Vote for one	Democrat JOHN DOE for President ALBERT ORE for Vice-President John Doe, Ella Moe Jane Roe, Tom Voe	Republican FRANK MOE for President HARRY COE for Vice-President Jane Doe, John Moe Tom Roe, John Voe			CONSTITUTIONAL AMENDMENT
UNITED STATES SENATOR Vote for one	TOM COE Republican	JACK MOE Democrat	JOE HOE Socialist		FOR
REPRESENTATIVE IN CONGRESS Vote for one	JOE DOE Democrat	MIKE ORE Republican			AGAINST
GOVERNOR Vote for one	BILL COE Republican	TOM ROE Democrat			
(Same for Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, State Auditor, Railroad and Public Service Commissioners, State Superintendent of Public Instruction, Clerk of the Supreme Court, Chief Justice of the Supreme Court, Associate Justice Justice of the Supreme Court and District Judges.)					
STATE SENATOR Vote for one	JOE COE Republican	TOM DOE Democrat			INITIATIVE NO. 1
MEMBER OF THE HOUSE OF REPRESENTATIVES Vote for four	JACK BOE Democrat	ALLEN JOE Republican	MIKE FOE Independent		
	PETE COE Democrat	OLE KOE Republican	JIM GOE Socialist		FOR
	BILL DOE Republican	JOE MOE Democrat	BILL LOE Prohibition		AGAINST
	FRANK HOE Democrat	EARL ROE Republican			
COUNTY COMMISSIONER Vote for one	JOHN DOE Democrat	MIKE ROE Republican			
(Same for all County and Township offices.)					

History: En. 23-1608A by Sec. 2, Ch. 20, L. 1959.

Title of Act

An act to amend section 23-1608, Revised Codes of Montana, 1947, relating to the arrangement and adjustment of voting machines; to provide that the ballot used on voting machines shall be arranged to conform as closely as possible to the arrangement of paper ballots used in precincts which do not have voting machines; to provide for the placing of the names of nonpartisan judicial candidates in a position on voting machines similar to the position occupied by non-

partisan judicial candidates upon paper ballots; and repealing section 23-2013, Revised Codes of Montana, 1947; providing for an effective date.

Repealing Clause

Section 3 of Ch. 20, Laws 1959 read "Section 23-2013, Revised Codes of Montana, 1947, is hereby repealed."

Effective Date

Section 4 of Ch. 20, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 10, 1959.

23-1611. (767) **Election returns.** (1) The judges, as soon as the count is completed and fully ascertained, shall place the machine for one (1) hour in such a position that the registering or recording compartments will be in full view of the public and any person desiring to view the number of votes cast for each person voted for at the election, must be permitted to do so. Immediately after the above said one (1) hour shall have expired the judges shall seal, close, lock the machine or remove the record so as to provide against voting or being tampered with, and in case of a machine so sealed or locked, it shall so remain for a period of at least twenty (20) days, except when used in a municipal primary nominating election, unless opened by order of a court of competent jurisdiction or the county recount board. Whenever a machine has been used in a municipal primary nominating election, it shall remain sealed and locked for a period of at least five (5) days, unless opened by order of a court of competent jurisdiction. When irregular ballots have been voted, the judges shall return them in a properly sealed package endorsed "irregular ballots," and indicating the precinct and county and file such package with the city or county clerk. It shall be preserved for six (6) months after such election and may be opened and its contents examined only upon an order of a court of competent jurisdiction or the county recount board; at the end of such six (6) months unless ordered otherwise by the court, such package and its contents shall be destroyed by the city or county clerk. All tally sheets taken from such machine, if any, shall be returned in the same manner.

(2). * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 168, L. 1907; Sec. 619, Rev. C. 1907; amd. Sec. 3, Ch. 246, L. 1921; re-en. Sec. 767, R. C. M. 1927; amd. Sec. 16, Ch. 42, L. 1963; amd. Sec. 1, Ch. 57, L. 1963; amd. Sec. 10, Ch. 156, L. 1965.

The 1965 amendment adopted the changes made by both 1963 acts and reduced the sealing period specified in the second sentence of subsection (1) from thirty to twenty days.

Repealing Clause

Section 11 of Ch. 156, Laws 1965 read "Sections 23-930, 23-932, 23-1002, 23-1006, 23-1007, R. C. M. 1947, are repealed."

Effective Date

Section 2 of Ch. 57, Laws 1963 provided that the act should be in effect from and after its passage and approval. Approved February 21, 1963.

Amendments

Chapter 42, Laws 1963, inserted "or the county recount board" after "court of competent jurisdiction" at the end of the second sentence and in the present fifth sentence of subsection (1).

Chapter 57, Laws 1963, inserted the words "except when used in a municipal primary nominating election" in the second sentence of subsection (1); and inserted the third sentence in subsection (1).

CHAPTER 17—ELECTION RETURNS

- Section 23-1702. Mode of canvassing.
- 23-1703. Where ballots are in excess of names on poll-books.
- 23-1709. Election returns by judges—how made.
- 23-1712. Filing of ballots and stubs by county clerk.
- 23-1714. Disposition of returns prior to canvass of vote.
- 23-1715. Clerk to file in his office books, papers, etc.

23-1702. (775) **Mode of canvassing.** The canvass must commence by a comparison of the poll-books from the commencement, and the cor-

rection of any mistakes that may be found therein, until they are found to agree. The judges must then take out of the box the ballots unopened except to ascertain whether each ballot is single, and count the same to determine whether the number of ballots corresponds with the number of names on the poll-books. If two or more ballots are found so folded together as to present the appearance of a single ballot, they must be laid aside until the count of the ballots is completed, and if, on comparing the count with the poll-books and further considering the appearance of such ballots, a majority of the judges are of the opinion that the ballots thus folded together were voted by one elector, they must be rejected; otherwise they must be counted.

History: Ap. p. Sec. 23, p. 380, Ban-nack Stat.; re-en. Sec. 23, p. 464, Cod. Stat. 1871; re-en. Sec. 22, p. 75, L. 1876; re-en. Sec. 546, 5th Div. Rev. Stat. 1879; re-en. Sec. 1028, 5th Div. Comp. Stat. 1887; amd. Sec. 1401, Pol. C. 1895; re-en. Sec. 573, Rev. C. 1907; re-en. Sec. 775,

R. C. M. 1921; amd. Sec. 12, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1253.

Amendment

The 1959 amendment substituted the words "poll-books" for "poll-lists" each time they appear.

23-1703. (776) Where ballots are in excess of names on poll-books. If the ballots then are found to exceed in number the whole number of names on the poll-books, they must be placed in the box (after being purged in the manner above stated), and one of the judges must, publicly, and without looking in the box, draw therefrom singly and destroy unopened so many ballots as are equal to such excess. And the judges must make a record on the poll-books of the number of ballots so destroyed.

History: Ap. p. Sec. 24, p. 380, Ban-nack Stat.; re-en. Sec. 24, p. 464, Cod. Stat. 1871; re-en. Sec. 23, p. 76, L. 1876; re-en. Sec. 537, 5th Div. Rev. Stat. 1879; re-en. Sec. 1029, 5th Div. Comp. Stat. 1887; amd. Sec. 1402, Pol. C. 1895; re-en. Sec. 574, Rev. C. 1907; re-en. Sec. 776,

R. C. M. 1921; amd. Sec. 13, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1255.

Amendment

The 1959 amendment substituted the words "poll-books" for the words "poll-lists" each time they appear.

23-1704. (777) What ballots must be counted.

School Elections

The validity of contested school elections is determined by the laws of general

elections as set forth in this section. Woolsey v. Carney, 141 M 476, 378 P 2d 658.

23-1709. (782) Election returns by judges—how made. The judges must, before they adjourn, inclose in a strong envelope, securely sealed and directed to the county clerk, the precinct registers, all certificates of registration received by them, the lists of persons challenged, both of the poll-books, both of the tally-sheets, and the official oaths taken by the judges and clerks of election; and must inclose in a separate package or envelope, securely sealed and directed to the county clerk, all unused ballots with the numbered stubs attached; and must also inclose in a separate package or envelope, securely sealed and directed to the county clerk, all ballots voted, including all voted ballots which, for any reason, were not counted or allowed, and all detached stubs from ballots voted, and endorse on the outside thereof "ballots voted." Each of the judges must write his name across the seal of each of said envelopes or packages. The ballot box must be returned to the county clerk.

History: Ap. p. Sec. 1408, Pol. C. 1895; amd. Sec. 6, Ch. 88, L. 1907; Sec. 580, Rev. C. 1907; re-en. Sec. 782, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1937; amd. Sec. 1, Ch. 65, L. 1943; amd. Sec. 1, Ch. 23, L. 1945; amd. Sec. 14, Ch. 64, L. 1959.

Amendment

The 1959 amendment substituted "precinct registers" for the words "check-lists" in this section.

23-1712. (786) Filing of ballots and stubs by county clerk. Upon the receipt of the packages or envelopes by the county clerk, he must file the package or envelope containing the ballots voted and detached stubs and the package or envelope containing the unused ballots, and must keep them unopened and unaltered for twelve (12) months, after which time, if there is no contest commenced in some tribunal having jurisdiction about such election or a recount is had as provided by law, he must burn such packages, or envelopes, without opening or examining their contents.

History: Ap. p. Sec. 1412, Pol. C. 1895; amd. Sec. 8, Ch. 88, L. 1907; Sec. 584, Rev. C. 1907; re-en. Sec. 786, R. C. M. 1921; amd. Sec. 3, Ch. 23, L. 1945; amd. Sec. 17, Ch. 42, L. 1963. Cal. Pol. C. Sec. 1265.

Amendment

The 1963 amendment inserted the words "or a recount is had as provided by law" after "jurisdiction about such election" near the end of the section.

23-1714. (788) Disposition of returns prior to canvass of vote. The envelopes containing the precinct registers, certificates of registration, poll-books, tally-sheets, and oaths of election officers must be filed by the county clerk and be kept by him, unopened and unaltered, until the board of county commissioners meet for the purpose of canvassing the returns, when he must produce them before such board, where the same shall be opened.

History: Ap. p. Sec. 1414, Pol. C. 1895; amd. Sec. 10, Ch. 88, L. 1907; Sec. 586, Rev. C. 1907; re-en. Sec. 788, R. C. M. 1921; amd. Sec. 15, Ch. 64, L. 1959.

Amendment

The 1959 amendment substituted the words "precinct registers" for the words "check-lists" and made the word poll-book plural.

23-1715. (789) Clerk to file in his office books, papers, etc. As soon as the returns are canvassed, the clerk must file in his office the poll-books, election records and the papers produced before the board from the package mentioned in the next preceding section.

History: En. Sec. 1415, Pol. C. 1895; re-en. Sec. 587, Rev. C. 1907; re-en. Sec. 789, R. C. M. 1921; amd. Sec. 16, Ch. 64, L. 1959. Cal. Pol. C. Sec. 1268.

Amendment

The 1959 amendment substituted the words "poll-books, election records" for the words "poll-book, lists."

CHAPTER 18—CANVASS OF ELECTION RETURNS— RESULTS AND CERTIFICATES

- Section 23-1807.** Duty of canvassing board.
23-1808. Certificates issued by the clerk.
23-1813. How transmitted.
23-1815. Messenger may be sent for returns—his duty and compensation.

23-1807. (796) Duty of canvassing board. The board must declare elected the person having the highest number of votes given for each office to be filled by the votes of a single county or a subdivision thereof.

If a recount shall show that two or more persons received an equal and sufficient number of votes to elect to the office of state senator, or member of the house of representatives, the county recount board shall certify such facts to the governor.

History: En. Sec. 6, p. 302, L. 1891; re-en. Sec. 1435, Pol. C. 1895; re-en. Sec. 593, Rev. C. 1907; amd. Sec. 1, Ch. 84, L. 1909; re-en. Sec. 796, R. C. M. 1921; amd. Sec. 18, Ch. 42, L. 1963.

Amendment

The 1963 amendment deleted from the end of the first sentence a clause reading, "and in the event of two or more persons receiving an equal and sufficient number of votes to elect to the office of state

senator, or member of the house of representatives, it shall be the duty of the board, under the direction of and in the presence of the district court, or judge thereof, to recount the ballots cast for such persons, and the board shall declare elected the person or persons shown by the recount to have the highest number of votes"; substituted "a recount" for "such recount" at the beginning of the second sentence; and made minor changes in phraseology.

23-1808. (797) Certificates issued by the clerk. The clerk of the board of county commissioners must immediately make out and deliver to such persons (except to the person elected district judge) a certificate of election signed by him and authenticated with the seal of the board of county commissioners, and said certificate shall contain therein written notice that the official bond of the elected or appointed official must be filed within thirty (30) days after notice of election or appointment, and that failure to file such bond shall cause the office to become vacant.

History: En. Sec. 7, p. 302, L. 1891; re-en. Sec. 1436, Pol. C. 1895; re-en. Sec. 594, Rev. C. 1907; re-en. Sec. 797, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1959. Cal. Pol. C. Sec. 1284.

Amendment

The 1959 amendment added the portion of this section beginning with the words "and said certificate."

23-1813. (802) How transmitted. The clerk must seal up such abstract, endorse it "Election Returns," and without delay transmit it to the secretary of state by certified mail.

History: En. Sec. 11, p. 303, L. 1891; re-en. Sec. 1441, Pol. C. 1895; re-en. Sec. 599, Rev. C. 1907; re-en. Sec. 802, R. C. M. 1921; amd. Sec. 1, Ch. 87, L. 1959. Cal. Pol. C. Sec. 1289.

Repealing Clause

Section 2 of Ch. 87, Laws 1959 repealed all acts or parts of acts in conflict therewith.

Amendment

The 1959 amendment substituted "by certified mail" for "by mail, registered."

23-1815. (804) Messenger may be sent for returns—his duty and compensation. If the returns from all the counties have not been received on the fifth day before the day designated for the meeting of the board of state canvassers, the secretary of state must forthwith send a messenger to the clerk of the board of county canvassers of the delinquent county, and such clerk must furnish the messenger with a certified copy of the statement mentioned in section 23-1805. The person appointed is entitled to receive as compensation five dollars per day for the time necessarily consumed in such service, and the traveling expenses necessarily incurred. His account therefor, certified by the secretary of state, must be paid out of the general fund of the state treasury.

History: Ap. p. Secs. 12 and 13, L. 1891; amd. Sec. 1443, Pol. C. 1895; re-en. Sec. 601, Rev. C. 1907; re-en. Sec. 804, R. C. M. 1921; amd. Sec. 16, Ch. 97, L. 1961.

Amendment

The 1961 amendment deleted the words "after being allowed by the board of examiners" which appeared after "secretary of state" in the last sentence.

CHAPTER 20—NONPARTISAN NOMINATION AND ELECTION OF JUDGES OF SUPREME COURT AND DISTRICT COURTS

- Section 23-2001. Nomination and election of district court and supreme court judges.
 23-2003. Petition for nomination—contents—form—filing—fees.
 23-2005. Arrangement and certification of judicial candidates—separate from party designation.

23-2001. (812.1) Nomination and election of district court and supreme court judges. That hereafter all candidates for the office of justice of the supreme court of the state of Montana or judge of the district court in any judicial district of the state of Montana, shall be nominated and elected in accordance with the provisions of this act and in no other manner.

Each vacancy for associate justice of the supreme court is to be considered as a separate and independent office for election purposes, and to facilitate the nomination and election of candidates thereto, the chief justice of the supreme court shall assign an individual number to the four (4) associate justices and certify these numbers to the office of the secretary of state not less than one hundred eighty (180) days before the date of the primary nominating election.

Each department in a judicial district which has more than one (1) judge of the district court is to be considered as a separate and independent office for election purposes.

History: En. Sec. 1, Ch. 182, L. 1935; amd. Sec. 2, Ch. 229, L. 1961.

Amendment

The 1961 amendment added the second and third paragraphs.

Compiler's Note

Section 1, Ch. 229, Laws 1961, amended sec. 93-321.

23-2003. (812.3) Petition for nomination — contents — form — filing—fees. All persons who shall desire to become candidates for nomination to any office within the provisions of this act shall prepare, sign and file petitions for nomination in compliance with the requirements of the primary election laws, which petition for nomination shall be substantially in the following form: To _____ (Name and title of officer with whom the petition is to be filed), and to the electors of the _____ (state or counties of _____ comprising the district or county as the case may be) in the state of Montana:

I, _____, reside at _____, and my postoffice address is _____. I am a candidate on the nonpartisan judicial ticket for the nomination for the office of _____ at the primary nominating election to be held in the _____ (state of Montana or district or county), on the _____ day of _____, 19____, and if I am

nominated as a candidate for such office I will accept the nomination and will not withdraw, and if I am elected, I will qualify as such officer.

Each person filing a petition for nomination to the office of associate justice of the supreme court shall, in the blank wherein he indicates the office for which the petition for nomination is being filed, designate the number of the associate justice whose office he is seeking. Each person filing a petition can make only one (1) such designation.

All persons who shall desire to become candidates for nomination as judge of the district court in any district having more than one (1) judge shall specify in said petition for nomination the number of the department to which they seek nomination and election, and their candidacy shall be limited solely to the numbered department so specified, it being intended hereby that the office of judge of each respective numbered department shall be filled in all respects as though each of said numbered departments were an entirely separate and independent elective office.

Provided, however, that no such petition for judicial office shall indicate the political party or political affiliations of the candidate, and provided further that no candidate for judicial office may in his petition for nomination state any measures or principles he advocates, or have any statement of measure or principles which he advocates, or any slogans, after his name on the nominating ballot as permitted by section 23-911.

Each person so filing a petition for nomination shall pay or remit therewith the fee prescribed by law for the filing of such a petition for the particular judicial position for which he aspires for nomination. All such petitions for justices of the supreme court and judges of the several district courts of the state shall be filed with the secretary of state.

History: En. Sec. 3, Ch. 182, L. 1935; amd. Sec. 3, Ch. 229, L. 1961.

Amendment

The 1961 amendment inserted two new paragraphs immediately after the petition form.

23-2005. (812.5) Arrangement and certification of judicial candidates—separate from party designation. At the same time and in the same manner as by law he is required to arrange and certify the names of candidates for other state offices the secretary of state shall separately arrange and certify and file as required by law, the names of all candidates for judicial office, certifying to each county clerk of the state the names of all candidates for judicial office entitled to appear on the primary ballot in his county, with all other information required by law to appear upon the ballot, which certificate shall separately state the names of candidates for each respective numbered associate justice and department in districts having more than one (1) judge, and which lists of judicial candidates shall be made upon separate sheets of paper from the lists of candidates to appear under party or political headings.

History: En. Sec. 5, Ch. 182, L. 1935; amd. Sec. 4, Ch. 229, L. 1961.

Amendment

The 1961 amendment after the words "to appear upon the ballot" inserted

"which certificate shall separately state the names of candidates for each respective numbered associate justice and department in districts having more than one (1) judge, and."

Repealing Clause

Section 5 of Ch. 229, Laws 1961, read as follows: "All acts and parts of acts in conflict herewith are hereby repealed, and all laws of the state of Montana pertain-

ing to elections, both primary and general, not in conflict herewith are hereby declared applicable to the nomination and election of the judicial officers herein referred to."

23-2013. (812.14) Repealed.

Repeal

This section (Sec. 14, Ch. 182, L. 1935), relating to the arrangement of the judi-

cial ballot when voting machines are used, was repealed by Sec. 3, Ch. 20, Laws 1959, effective February 10, 1959.

CHAPTER 22—MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

Section 23-2206. Residence required for election or appointment to Congress.

23-2206. Residence required for election or appointment to Congress. No person shall be elected or appointed to the office of senator or representative in the Congress of the United States who has not resided in this state at least one year prior to his election or appointment.

History: En. Sec. 1, Ch. 146, L. 1965.

be elected or appointed to the office of senator or representative in Congress who has not resided in the state at least one year prior to his election or appointment.

Title of Act

An act providing that a person may not

CHAPTER 23—RECOUNT OF BALLOTS—RESULTS

- Section 23-2309. Purpose of act—liberal construction.
- 23-2310. Application of act.
- 23-2311. Close vote as ground for recount—petition filed with clerk of court or secretary of state.
- 23-2312. Tie vote as ground for recount.
- 23-2313. Total vote—manner of computation.
- 23-2314. County recount board—composition—disqualification of interested candidates.
- 23-2315. Clerk of county recount board.
- 23-2316. Notice to recount board of filing of petition—convening of board.
- 23-2317. Persons entitled to appear at recount—opening and recount of ballots.
- 23-2318. Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination.
- 23-2319. Re-convening state board of canvassers—re-canvass by state board—corrected abstract of votes—new certificate of election or nomination.
- 23-2320. Effect of new certificate of election or nomination.
- 23-2321. Tie vote after recount.
- 23-2322. Expenses of recount.
- 23-2323. Supplemental to prior law.

23-2301. (828.1) Recount of votes, order for—application, etc.

Cross-Reference

Application of Montana Rules of Civil

Procedure to recount proceedings, see M. R. Civ. P., Rule 81(a), Table A.

23-2309. Purpose of act—liberal construction. It is the purpose of this act to procure a speedy and correct determination of the true and actual count of all ballots cast at an election, which ballots are valid on their face, and all provisions of this act shall be liberally construed to that end.

History: En. Sec. 1, Ch. 42, L. 1963.

Title of Act

An act providing for a recount of votes in elections; declaring the method of determining when a recount may be requested; specifying the duties of the sec-

retary of state and the county clerks; establishing county recount boards; providing the method of recount; providing for the expense of a recount; and amending sections 23-1611, 23-1712, and 23-1807, R.C.M. 1947.

23-2310. Application of act. The provisions herein shall apply to the recount of ballots cast in any election.

History: En. Sec. 2, Ch. 42, L. 1963.

23-2311. Close vote as ground for recount—petition filed with clerk of court or secretary of state. A recount shall be made under any of the following conditions:

1. When any candidate for any office, position, or nomination which is voted upon only by the electors of one county, or some part thereof, except the office of judge of the district court, is defeated according to the official returns by a margin not exceeding one-fourth of one percent ($\frac{1}{4}$ of 1%) of the total vote cast for all candidates for such office, position, or nomination, or is defeated by a margin not exceeding ten (10) votes, whichever is the greater, he may within five (5) days after completion of the official canvass of the returns file with the county clerk his duly verified petition stating he believes a recount will change the result and praying for a recount of all votes cast for such office, position, or nomination.

2. Whenever any candidate for any office, position, or nomination which is voted upon in more than one county or for the office of judge of the district court, is defeated according to the official returns by a margin not exceeding one-fourth of one percent ($\frac{1}{4}$ of 1%) of the total vote cast for all candidates for such office, position, or nomination, he may within five (5) days after completion of the official canvass of the returns file a petition with the secretary of state such as set forth in subdivision one (1) of this section. The secretary of state shall immediately notify by registered mail each county clerk whose county includes any precincts which voted for such office, position, or nomination of the filing of such petition, and the recount shall be conducted as to all of such precincts in each such county.

3. Whenever any referred or submitted question is voted upon throughout the state and is determined according to the official canvass by a margin of not exceeding one-fourth of one percent ($\frac{1}{4}$ of 1%) of the total vote cast for and against on such question, there may be filed with the secretary of state within five (5) days after the completion of the official canvass, a petition signed by not less than one hundred (100) legally qualified electors of the state, and representing at least five (5) counties of the state, a petition with the secretary of state such as set forth in subdivision one (1) of this section. The secretary of state shall immediately notify by registered mail each county clerk of the filing of such petition, and the recount shall be conducted as to all precincts in each county.

History: En. Sec. 3, Ch. 42, L. 1963.

23-2312. Tie vote as ground for recount. When by reason of a tie vote found to exist upon the canvass of the original official returns, it is impossible to declare who has been elected or nominated to an office or position, it shall be the duty of the canvass board making such canvass to certify said vote to the county clerk where the election involved is confined to one county, except for the office of district judge, and to the secretary of state as to all other elections. The county clerk, or the secretary of state, as the case may be, shall proceed exactly as if a petition had been duly filed under this act, and the recount shall proceed accordingly. In case of a tie vote found to exist after the recount, such tie vote shall be resolved as provided by existing statutes.

History: En. Sec. 4, Ch. 42, L. 1963.

23-2313. Total vote—manner of computation. When in any election an elector may vote for two or more candidates for the same office, the total vote cast for all candidates for such office shall for the purposes of this act be the total vote actually cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: En. Sec. 5, Ch. 42, L. 1963.

23-2314. County recount board—composition—disqualification of interested candidates. The county recount board of each county shall consist of the three members of the board of county commissioners. If at the time and place appointed for the recount one or more of the county commissioners should not attend, the place of the absentees must be supplied by one or more of the following county officers, whose duty it is to act in the order named: the treasurer, the assessor, the sheriff, the clerk of court. The county recount board shall always consist of three acting members. If any member of the county recount board was among the candidates for an office, nomination, or position to which votes are to be recounted, he shall thereby be disqualified.

History: En. Sec. 6, Ch. 42, L. 1963.

23-2315. Clerk of county recount board. The county clerk shall be the clerk of the county recount board, and the board may hire additional clerks as needed.

History: En. Sec. 7, Ch. 42, L. 1963.

23-2316. Notice to recount board of filing of petition—convening of board. The county clerk shall immediately upon the filing with him of any petition for a recount, or upon receipt from the secretary of state of notice of such filing with the secretary of state, notify the members of the county recount board. The board shall then convene at the usual place of meeting of the county commissioners without undue delay, and in no event more than five (5) days after the filing of the petition with the county clerk or the notice of the filing with the secretary of state.

History: En. Sec. 8, Ch. 42, L. 1963.

23-2317. Persons entitled to appear at recount—opening and recount of ballots. Each candidate for any office, nomination, or position in-

volved in a recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots. If the recount is upon a referred or submitted question, one legally qualified elector of the state favoring each side as to such question may be present and represent such side. The county clerk shall produce, unopened, the sealed package or envelope received by him from the judges of election of each election precinct in the county. The procedure for conducting the recount of votes shall be as provided in subsection three (3) of section 23-2304, R.C.M. 1947, and the recount shall proceed as expeditiously as reasonably possible until completed.

History: En. Sec. 9, Ch. 42, L. 1963.

23-2318. Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination. Immediately upon conclusion of the recount of all ballots to be recounted the county recount board shall certify the result. The certificate must be signed by at least two members of such board, attested under seal by the county clerk. The certificate shall set forth in substance the proceedings of the board and appearance of any candidates or representatives, shall adequately designate each precinct recounted, the vote of such precinct according to the official canvass thereof previously made as to the office, nomination, position, or question involved, and the correct vote of such precinct as determined by the board through the recount. When the certificate relates to the recount ballots as to an office, nomination, position, or question voted upon in more than one county or for the office of judge of the district court, the certificate shall be made in duplicate, and either the original or duplicate original immediately transmitted to the secretary of state by registered mail. If the recount relates to the recount of ballots as to an office, nomination, position, or question voted upon in only one county, or some part thereof, the county recount board shall immediately re-canvass the returns as corrected by the certificate showing the result of the recount, and make a new and corrected abstract of the votes cast. If such correct abstract shows no change in the result as previously found on the official returns, no further action shall be taken. If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to have been elected or nominated.

History: En. Sec. 10, Ch. 42, L. 1963.

23-2319. Re-convening state board of canvassers—re-canvass by state board—corrected abstract of votes—new certificate of election or nomination. Upon receipt by the secretary of state of certificates by all county recount boards required to be forwarded, the secretary of state shall file the same, and fix a time and place as early as reasonably possible for re-convening the state board of canvassers, and shall notify the members of the state board of canvassers thereof. The state board of canvassers shall re-convene at the time and place designated and re-canvass the official returns as to such office, nomination, position or question, as corrected by such certificates, and shall make a new and corrected abstract of the votes cast. If such corrected abstract shows no change in the result

previously found on the official returns, no further action shall be taken. If there is a change in the result, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination previously issued to each candidate found to have been elected or nominated.

History: En. Sec. 11, Ch. 42, L. 1963.

23-2320. Effect of new certificate of election or nomination. Any certificate of nomination or election issued under the provisions of this act shall have the effect of and shall be recognized as superseding and rendering null and void any certificate of election or nomination previously issued which is inconsistent with the new certificate, and the holder of any certificate of nomination or election issued under this act shall have the same identical rights as if he held the original certificate of nomination or election and no recount had been had.

History: En. Sec. 12, Ch. 42, L. 1963.

23-2321. Tie vote after recount. When a tie vote between candidates is found to exist on the basis of the recount, and by reason of such tie vote it cannot be determined who has been nominated or elected, the office or position shall be filled as provided by section[s] 23-1901 to 23-1904, R.C.M. 1947.

History: En. Sec. 13, Ch. 42, L. 1963.

23-2322. Expenses of recount. The expense of the recount of the votes as provided in this act shall be a county charge, except that any expenses of the secretary of state, and state board of canvassers shall be a state charge.

History: En. Sec. 14, Ch. 42, L. 1963.

23-2323. Supplemental to prior law. This act is supplemental to and not in derogation of the law relating to contest of elections, or the recount procedure set forth in sections 23-2301 to 23-2308, R.C.M. 1947.

History: En. Sec. 15, Ch. 42, L. 1963.

CHAPTER 25—ELECTRONIC VOTING SYSTEMS

- Section 23-2501. Purpose of act.
 23-2502. Definition of terms.
 23-2503. Use of electronic systems authorized—specifications—use at primaries—procedure.
 23-2504. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices.
 23-2505. Closing of polls—counting of votes—sealing and preservation of ballots—returns.
 23-2506. Rules and regulations—specifications for devices and equipment.
 23-2507. General election laws applicable.

23-2501. Purpose of act. The purpose of this act is to authorize the use of electronic voting systems in which the voter records his votes by means of marking or punching a ballot or one or more ballot cards, which are so designed that votes may be counted by data processing machines at one or more counting places.

History: En. Sec. 1, Ch. 20, L. 1965. **Title of Act.**

An act authorizing the use of electronic voting systems by counties, cities and towns.

23-2502. Definition of terms. As used in this act, unless otherwise specified:

(a) "Automatic tabulating equipment" includes apparatus necessary to automatically examine and count votes as designated on ballots and data processing machines which can be used for counting ballots and tabulating results.

(b) "Ballot card" means a ballot which is voted by the process of punching.

(c) "Ballot labels" means the cards, papers, booklet, pages or other material containing the names of offices and candidates and statements of measures to be voted on.

(d) "Ballot" may include ballot cards, ballot labels and paper ballots.

(e) "Counting location" means a location selected by the county clerk and recorder or city clerk for the automatic processing or counting, or both, of ballots.

(f) "Electronic voting system" means a system of casting votes by use of marking devices and tabulating ballots employing automatic tabulating equipment or data processing equipment.

(g) "Marking device" means either an apparatus in which ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter or any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

History: En. Sec. 2, Ch. 20, L. 1965. **Compiler's Note**

Chapter 20, as enacted in 1965, contained no section "3".

23-2503. Use of electronic systems authorized—specifications—use at primaries—procedure. (a) Electronic voting systems may be used in elections, provided that such systems enable the voter to cast a vote in secrecy for all offices and all measures on which he is entitled to vote, and that the automatic tabulating equipment may be set to reject all votes for any office or measure when the number of votes therefor exceeds the number which the voter is entitled to cast, or when the voter is not by law entitled to cast a vote for the office or measure.

(b) Electronic voting systems may be used at primary elections provided the voter can secretly select the party for which he wishes to vote, and the automatic tabulating equipment will count only votes for the candidates of one party, and will reject all votes for an office when the number of votes therefor exceeds the number which the voter is entitled to cast, and will reject all votes of a voter cast for candidates of more than one party.

(c) So far as applicable, the procedure provided for voting paper ballots shall apply.

(d) The governing body of any county, city or town may adopt, experiment with, or abandon any electronic voting system herein authorized and approved for use in the state, and may use such system in all or a part of the precincts within its boundaries, or in combination with paper ballots. It may enlarge, consolidate or alter the boundaries of the precincts where an electronic voting system is to be used.

History: En. Sec. 4, Ch. 20, L. 1965.

23-2504. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices. (a) In precincts where an electronic voting system is used, a sufficient number of voting booths shall be provided for the use of such systems, and the booths shall be arranged in the same manner as provided for use with paper ballots.

(b) The officials charged with the duty of providing ballots, ballot cards or ballot labels for any polling place shall provide therefor sample ballots, ballot cards or ballot labels which shall be exact copies of the official ballots which are caused to be printed by them; said sample ballots shall be arranged in the form of a diagram showing the front of the marking device as it will appear after the ballots are arranged therein for voting on election day. Such sample ballots shall be posted by the election judges near the entrance of the voting booths and shall be there open to public inspection during the whole of election day.

(c) The ballot information, whether placed on the ballot or on the marking device, shall, as far as practicable, be in the order of arrangement provided for paper ballots except that such information may be in vertical or horizontal rows, or on a number of separate pages. Ballots for all questions must be provided in the same manner and must be arranged on or in the marking device in the places provided for such purpose. Any voter who spoils his ballot or ballot card or makes an error may return it to the election board and secure another.

(d) A separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the elector places his ballot card after voting, shall be provided where necessary to permit electors to write in the names of persons whose names are not on the ballot.

(e) The county clerk and recorder or city clerk shall cause the marking devices to be put in order, set, adjusted and made ready for voting when delivered to the election precincts. Before the opening of the polls the election judges shall compare the ballots used in the marking device with the sample ballots furnished, and see that the names, numbers and letters thereon agree, and shall certify thereto on forms provided for this purpose. The certification shall be filed with the election returns.

(f) Within five days prior to the election day, the county clerk and recorder or city clerk shall have the automatic tabulating equipment tested to ascertain that the equipment will correctly count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given at least forty-eight (48) hours prior thereto by publication once in one or more daily or weekly newspapers published in the

county, city or town using such equipment, if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be open to representatives of the political parties, candidates, the press and the public. The test shall be conducted by processing a pre-audited group of ballots so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made before the automatic tabulating equipment is approved. The test shall be repeated immediately before the start of the official count of the ballots, in the same manner as set forth above. After the completion of the count, the programs used and ballots shall be sealed, retained and disposed of as provided for paper ballots.

History: En. Sec. 5, Ch. 20, L. 1965.

23-2505. Closing of polls—counting of votes—sealing and preservation of ballots—returns. (a) In precincts where an electronic voting system is used, as soon as the polls are closed, the election judges shall secure the marking devices against further voting. They shall thereafter open the ballot box and count the number of ballots or envelopes containing ballots that have been cast to determine that the number of ballots does not exceed the number of voters shown on the poll or registry lists. If there is an excess, this fact shall be reported in writing to the appropriate election officer in charge with the reasons therefor, if known. The total number of voters shall be entered on the tally sheets. The election judges shall thereupon count the write-in votes and prepare a return of such votes on forms provided for this purpose. If ballot cards are used, all ballots on which write-in votes have been recorded shall be serially numbered, starting with the number one, and the same number shall be placed on the ballot card of the voter. The inspectors or other appropriate precinct election officials shall compare the write-in votes with the votes cast on the ballot card and if the total number of votes for any office exceeds the number allowed by law, a notation to that effect shall be entered on the back of the ballot card and it shall be returned to the counting location in an envelope marked "defective ballots" and such invalid votes shall not be counted. So far as applicable, provisions relating to defective paper ballots shall apply.

(b) The election judges shall place all ballots that have been cast in the container provided for that purpose, which shall be sealed and delivered forthwith by the election judges to the counting location or other designated place, together with the unused, void and defective ballots and returns.

(c) All proceedings at the counting location shall be under the direction of the county clerk and recorder or city clerk under the observation of at least three election judges designated by the county commissioners, city council or commission and shall be open to the public, but no persons except those employed and authorized for the purpose shall touch

any ballot, ballot container or return. If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a defective ballot which shall not include the invalid votes. All duplicate ballots shall be clearly labeled "duplicate," shall bear a serial number which shall be recorded on the damaged or defective ballot and shall be counted in lieu of the damaged or defective ballot.

(d) The return printed by the automatic tabulating equipment, to which has been added the return of write-in and absentee votes, shall constitute the official return of each precinct or election district. Upon completion of the count the returns shall be open to the public.

History: En. Sec. 6, Ch. 20, L. 1965.

23-2506. Rules and regulations—specifications for devices and equipment. (a) The secretary of state may promulgate rules for the administration of this section, and shall approve the marking devices and automatic tabulating equipment used in electronic voting systems.

(b) No marking device or automatic tabulating equipment shall be approved unless it fulfills the following requirements:

(1) It shall permit and require voting in absolute secrecy.

(2) It shall permit each elector to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote, and no others; to vote for as many persons for an office as he is entitled to vote for; to vote for or against any question upon which he is entitled to vote; and to vote, where applicable, for all candidates of one party or to vote a split ticket as he desires.

(3) It shall permit each elector, at presidential elections, by one punch or mark to vote for the candidates of that party for presidential elector as a group.

(4) It shall comply with all other requirements of the election laws so far as they are applicable.

History: En. Sec. 7, Ch. 20, L. 1965.

23-2507. General election laws applicable. All laws of this state applicable to elections where voting is done in another manner than by electronic voting systems and all penalties prescribed for violation of such laws, shall apply to elections and precincts where electronic voting systems are used, in so far as they are not in conflict with the provisions of this act.

History: En. Sec. 8, Ch. 20, L. 1965.

TITLE 25—FEES AND SALARIES

- Chapter 1. Fees of state officers, 25-102, 25-110.
2. Fees of county officers, 25-226, 25-231.
3. Fees and salaries of justices of the peace and constables, 25-301, 25-303, 25-306, 25-309.
4. Jurors' and witnesses' fees, 25-401, 25-404.
5. Salaries of state officers, deputies and employees, 25-501, 25-501.1, 25-508.
6. Salaries of county officers, deputies and employees, 25-605, 25-609.

CHAPTER 1—FEES OF STATE OFFICERS

- Section 25-102. Fees of secretary of state.
25-110. Water users' association exempt from payment of fees.

25-101. (4912) Repealed.

Repeal

This section (Sec. 4630, Pol. C. 1895; Sec. 3163, Rev. C. 1907; Sec. 4912, R. C. M. 1921), relating to the fees of secretary of state and state auditor principally on insurance matters, was repealed by Sec. 673, Ch. 286, Laws 1959, effective January 1, 1961.

25-102. (145) Fees of secretary of state. The secretary of state, for services performed in his office, must charge and collect the following fees:

1. For each copy of any law, resolution or record or other document or paper on file in his office, forty cents per folio, or, if the copy is made by any process of reproduction by photographic, photostatic or similar process, the fee shall be seventy-five cents per page or fraction thereof.

2. For affixing certificate and seal, two dollars, except that certificates of good standing and certificates of the secretary of state relative to the corporate character and capacity of a corporation pursuant to section 15-117 shall be five dollars each.

3. For issuing each certificate of incorporation and each certificate of increase of capital stock, three dollars.

4. For recording and filing each certificate of incorporation and each certificate of increase of capital stock, the following amounts shall be charged:

Amounts up to one hundred thousand dollars, one dollar per thousand dollars.

Additional from one hundred thousand dollars, to two hundred and fifty thousand dollars, eighty cents per thousand dollars.

Additional from two hundred and fifty thousand dollars to five hundred thousand dollars, sixty cents per thousand dollars.

Additional from five hundred thousand dollars to one million dollars, forty cents per thousand dollars.

Additional over one million dollars, twenty cents per thousand dollars.

Providing, that no fee for filing any articles of incorporation or increase of capital stock shall be less than fifty dollars except those enumerated in the next subdivision, which do not have capital stock and are not organized for the purpose of profit.

Fees for an increase of capital stock shall be computed on the amount of increase at the same rate as for original incorporation for the amount of the increase.

5. For all services in connection with the issuance of certificate, filing and recording of each of the following, whether foreign or domestic, forty dollars, plus two dollars for certifying a copy of the articles so filed, when required for filing in the office of the county clerk: religious societies, churches, organizations for religious purposes, hospitals, lyceums, musical and scientific societies, libraries, benevolent and fraternal societies, social clubs, agricultural societies, stock growers' associations, grazing associations and other associations of like character, including local, independent and subordinate organizations, as well as state, supervisory, governing and grand organizations, and bodies of any such associations, societies or orders, or for the purpose of establishing public or private charities, or both. Provided, however, that the above enumerated organizations do not have capital stock and are not organized for the purpose of profit.

6. For issuing each certificate of decrease of capital stock, twenty dollars.

7. For recording and filing each certificate of decrease of capital stock, ten dollars.

8. For issuing each certificate of continuance of corporate existence, ten dollars.

9. For recording and filing each certificate of continuance of corporate existence, the following amounts shall be charged:

Amounts up to one hundred thousand dollars, fifty cents per thousand dollars.

Additional from one hundred thousand dollars to two hundred and fifty thousand dollars, forty cents per thousand dollars.

Additional from two hundred and fifty thousand dollars to five hundred thousand dollars, thirty cents per thousand dollars.

Additional from five hundred thousand dollars to one million dollars, twenty cents per thousand dollars.

Additional over one million dollars, ten cents per thousand dollars.

Providing, that no fee for filing any certificate of continuance of corporate existence shall be less than twenty-five dollars, except that corporations enumerated in subdivision five of this section shall pay only for the certificate of continuance provided in subdivision eight of this section, when extending their corporate existence for a term of years, or changing their corporate existence from a term of years, or continual or perpetual succession to perpetual existence.

10. For recording and filing each notice of removal of place of business, each certificate of change of name, or each certificate making capital stock assessable, ten dollars, and for issuing a certificate thereon, five dollars.

11. For filing each notice of appointment of agent, amendment to articles of incorporation, change of agent, change of principle [principal] place of business, or notice of withdrawal of a foreign corporation, five dollars.

12. For filing each annual statement or report of any foreign corporation, five dollars.

13. For receiving and recording each official bond, ten dollars.

14. For each commission or other document, signed by the governor, and attested by the secretary of state (pardon and military commissions excepted), five dollars.

15. For filing the annual report required under section 15-811 by domestic corporations, three dollars.

16. For filing each trade mark, five dollars; for filing and recording each assignment of a trade mark, five dollars; and for issuing each certificate of record, five dollars.

17. For filing and recording miscellaneous papers, records, or other documents, five dollars.

18. For filing and recording any other paper not otherwise herein provided for, five dollars. When a copy of any law, resolution or record or other document or paper on file in the office of the secretary of state is presented for comparison and certification, ten cents per folio must be charged and collected for proofreading the same. That no member of the legislative assembly, or state or county officer, can be charged for any search relative to matters appertaining to the duties of his office; nor must he be charged any fee for a certified copy of any law or resolution passed by the legislative assembly relative to his official duties. Fees must be collected in advance, and when collected by the secretary of state, must be paid to the state treasurer at the end of each quarter, as provided in the constitution.

19. For filing and recording a certificate or decree of dissolution, five dollars.

History: Ap. p. Sec. 410, Pol. C. 1895; amd. Sec. 1, p. 47, L. 1899; amd. Sec. 1, Ch. 127, L. 1903; amd. Sec. 1, Ch. 74, L. 1905; re-en. Sec. 165, Rev. C. 1907; amd. Sec. 1, Ch. 91, L. 1921; re-en. Sec. 145, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1935; amd. Sec. 1, Ch. 116, L. 1961. Cal. Pol. C. Sec. 416.

Compiler's Note

The compiler inserted the bracketed word "principal" in subd. 11.

Amendment

The 1961 amendment increased the basic fee in subd. 1 from 20¢ to 40¢ per folio; added to subd. 1 the clause relating to photographic reproductions; increased the basic fee in subd. 2 from \$1.00 to \$2.00; added to subd. 2 the clause relating to certificates as to corporate status; added the last paragraph to subd. 4; increased the basic fee in subd. 5 from \$20 to \$40; inserted in subd. 5 the words "plus two dollars for certifying a copy of the articles so filed, when required for filing in the office of the county clerk"; increased the fee in subd. 6 from \$10 to \$20; increased the fee in subd. 7 from \$5.00 to \$10; added the proviso to subd. 9; increased the basic

fee in subd. 10 from \$5.00 to \$10; added to subd. 10 the words "and for issuing a certificate thereon, five dollars"; inserted in subd. 11 the words "amendment to articles of incorporation, change of agent, change of principle place of business, or notice of withdrawal of a foreign corporation"; substituted "annual statement or report" in subd. 12 for "annual or semi-annual statement"; increased the fee in subd. 13 from \$5.00 to \$10; substituted a new subd. 15 for one reading "15. For searching the records and archives of the state, one dollar"; inserted in subd. 16 the words "for filing and recording each assignment of a trade mark, five dollars"; increased the fee specified in the last clause of subd. 16 from \$1.00 to \$5.00; inserted "filing and" near the beginning of subd. 17; increased the fee in subd. 17 from \$1.00 to \$5.00; deleted from the end of subd. 17 the words "for recording, twenty cents per folio; inserted "and recording" near the beginning of subd. 18; substituted "five dollars" for "one dollar for filing and twenty cents for folio for recording" at the end of the first clause in subd. 18; increased the comparison and proofreading fee specified in subd. 18 from 5¢ to 10¢ per folio; and added subd. 19.

25-110. (147) Water users' association exempt from payment of fees. Any water users' association, organized in conformity with the require-

ments of the laws of the United States and of the state of Montana, under the reclamation act of June 17, 1902, which, under the articles of incorporation, is authorized to furnish water only to its stockholders, shall be exempt from the payment of any incorporation tax and from the payment of any annual franchise tax, and upon filing its articles of incorporation with the secretary of state, shall be required to pay only a fee of forty dollars (\$40.00) for the filing and recording of such articles of incorporation, and the issuance of certificate of incorporation.

History: En. Sec. 1, Ch. 66, L. 1905; re-en. Sec. 167, Rev. C. 1907; re-en. Sec. 147, R. C. M. 1921; amd. Sec. 9, Ch. 117, L. 1961.

Amendment

The 1961 amendment changed the filing fee from ten dollars to forty dollars.

CHAPTER 2—FEES OF COUNTY OFFICERS

Section 25-226. Fees of sheriff.
25-231. Fees of county clerks.

25-201. (4864) Disposal of fees collected by county officers.

References

Cited or applied in *State v. Hale*, 129 M 449, 291 P 2d 229, 234.

25-203. (4887) Fees must be paid into county treasury, when.

References

Cited or applied in *State v. Hale*, 129 M 449, 291 P 2d 229, 235.

25-226. (4916) Fees of sheriff.

(1) and (2). * * * [Subdivisions (1) and (2), same as parent volume.]

(3) In addition to the fees above specified, the sheriff shall receive for each mile actually traveled, in serving any writ, process, order or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail, only his actual expenses when such travel is made by railroad, and when travel is other than by railroad, he shall receive eleven cents (11¢) per mile for each mile actually traveled by him both going and returning, and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail, and he shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and dieting such persons during such transportation; provided that where more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but one mileage shall be charged.

(4). * * * [Same as parent volume.]

History: En. Sec. 4634, Pol. C. 1895; re-en. Sec. 3167, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1919; re-en. Sec. 4916, R. C. M. 1921; amd. Sec. 1, Ch. 111, L. 1927; amd. Sec. 1, Ch. 89, L. 1929; amd. Sec. 1, Ch. 121, L. 1933; amd. Sec. 1, Ch. 139, L. 1937; amd. Sec. 4, Ch. 121, L. 1941; amd. Sec. 2, Ch. 59, L. 1949; amd. Sec. 2, Ch. 82, L. 1957.

Compiler's Note

Section 1 of Ch. 82, Laws 1957 amended section 16-2723.

Amendment

The 1957 amendment in subd. (3) increased the rate received per mile from nine cents to eleven cents.

Repealing Clause

Section 3 of Ch. 82, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 82, Laws 1957 provided the act should be in effect from and

after its passage and approval. Approved March 2, 1957.

Agreement for Extra Fees

There is no rule in Montana that bars an attaching creditor from entering into a private agreement with the sheriff to pay such sheriff out of the attaching creditor's own pocket additional compensation over and above that contemplated by the statute. *Bucher v. Fraser*, 138 M 83, 354 P 2d 1042, 1047.

25-227. (4886) Fees for board of prisoners.**In General**

An information which charges that defendants presented for allowance to the board of county commissioners a "certain false and fraudulent monthly report concerning board furnished Missoula County prisoners" is insufficient to state an of-

fense unless accompanied by a statement of facts upon which the charges of falsehood or fraud rest. *State v. MacLean*, 129 M 500, 291 P 2d 250, 252. (Concurring and dissenting opinion, 129 M 500, 291 P 2d 250, 252.)

25-229. (4910) Sheriff falsely representing his expenses, etc.**Information**

Information which charges that defendants presented for allowance to the board of county commissioners a certain false and fraudulent monthly report concerning board furnished Missoula County prisoners is insufficient to state an offense

unless accompanied by a statement of facts upon which the charges of falsehood or fraud rest. *State v. MacLean*, 129 M 500, 291 P 2d 250, 252. (Concurring and dissenting opinion, 129 M 500, 291 P 2d 250, 252.)

25-231. (4917) Fees of county clerks. The fees of county clerks, which must be charged and collected for the use of their respective counties, are as follows:

For recording and indexing each instrument of writing allowed by law to be recorded; except as hereinafter provided;

For first folio, sixty cents (60¢) and for each subsequent folio or fraction thereof, thirty cents (30¢);

For each entry in index, twenty cents (20¢);

For certificate that such instrument has been recorded with seal affixed, one dollar (\$1.00);

For recording and indexing each real estate mortgage, assignment, renewal, or release of real estate mortgage;

For each folio, forty cents (40¢);

For each entry in index, twenty cents (20¢);

For certificate that such mortgage, assignment or release has been recorded with seal affixed, one dollar (\$1.00);

For recording and indexing each certificate of location of quartz or placer mining claim, millsite claim, or notice of appropriation of water, including certificate that such instrument has been recorded with seal affixed, four dollars (\$4.00);

For recording and indexing each affidavit of annual labor on mining claim, including certificate that such instrument has been recorded with seal affixed, two dollars (\$2.00) for the first mining claim in said affidavit, and fifty cents (50¢) for each additional mining claim described and included therein;

For filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, one dollar (\$1.00);

For filing and indexing each certificate of incorporation or annual statement of any corporation, two dollars (\$2.00);

For recording and platting each town site or map;

For each lot up to and including one hundred, fifty cents (50¢);

For each additional lot in excess of one hundred, ten cents (10¢);

For recording the field notes of survey of any town site, per folio, fifty cents (50¢).

Provided that in all cases where recording is done by photographic or similar process the fee to be charged by the county clerk and recorder for filing and indexing the same shall be two dollars (\$2.00) for each page or fraction thereof of said instrument.

For a copy of any record or paper, for each folio, thirty cents (30¢) and for each certification with seal affixed, one dollar (\$1.00); provided, that in all cases where copies of any record or paper are to be certified by the county clerk and such copy is furnished to said clerk for certification, said clerk shall not make a charge nor receive a fee for the comparison of such copy, other than the fee of one dollar (\$1.00) for his certificate and seal.

For searching any index record of files of the office, for each year when required, in abstracting or otherwise, thirty cents (30¢);

For each entry of discharge or satisfaction of mortgage, lien or other instrument on the margin of record thereof, or upon the original instrument, and noting same in the indexes concerned, fifty cents (50¢);

For administering an oath with certificate and seal he shall make no charge;

For taking and certifying an acknowledgment, with seal affixed, for signature thereto he shall make no charge;

For recording and indexing any instrument which may be recorded pursuant to the provisions of section 73-104, Revised Codes of Montana, 1947, and which pertains to land allotted to an Indian or land within an Indian Reservation, except fee patents, he shall make no charge;

For filing, indexing, or other services provided for by Part 4 of the Uniform Commercial Code—Secured Transactions, such fees as are prescribed therein.

For filing or recording or indexing any other instrument not herein expressly provided for, the same fee as hereinbefore provided for a similar service.

On each instrument delivered to him for recording, it shall be the duty of the county clerk to endorse thereon all charges made by him for such service and such endorsement shall be recorded as a part of the instrument in his office in order that the state examiner may verify such charges from time to time and may see that they have been properly entered on the fee book or reception record in the county clerk's office. [Effective January 1, 1965.]

History: En. Sec. 4635, Pol. C. 1895; C. M. 1921; amd. Sec. 1, Ch. 87, L. 1941; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R. Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L.

1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963.

Amendments

The 1957 amendment inserted the paragraph relating to instruments pertaining to Indian lands.

The 1959 amendment doubled the amount of the fees received by the county clerk for the services performed.

The 1963 amendment deleted the words "chattel mortgage, affidavit of renewal of chattel or real estate mortgage, assign-

ment or release of chattel mortgage, a" from the paragraph pertaining to writs of attachment, executions, etc.; and inserted the paragraph pertaining to services provided for by Part 4 of the Uniform Commercial Code.

Repealing Clauses

Section 3 of Ch. 148, Laws 1957 and Sec. 2 of Ch. 9, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 3—FEES AND SALARIES OF JUSTICES OF THE PEACE AND CONSTABLES

Section 25-301. Fees of justices of the peace in civil actions.

25-303. Fees of justices of the peace in criminal actions.

25-306. Salaries of justices of the peace in certain townships—hours—quarters.

25-309. Fees of constable.

25-301. (4924) Fees of justices of the peace in civil actions. The following is the schedule of fees which must be collected by justices of the peace in every civil action introduced in a justice court:

Three dollars and fifty cents (\$3.50) when summons is issued, to be paid by the plaintiff.

Three dollars and fifty cents (\$3.50) when issue is joined, to be paid by the defendant.

Three dollars and fifty cents (\$3.50) of the prevailing party when judgment is rendered. In cases where judgment is entered by default, no charge except the three dollars and fifty cents (\$3.50) for the issuance of summons shall be made for any services, including issuing and return of execution.

Three dollars and fifty cents (\$3.50) for all services in an action where judgment is rendered by confession.

Three dollars and fifty cents (\$3.50) for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 1, Ch. 55, L. 1921; re-en. Sec. 4924, R. C. M. 1921; amd. Sec. 1, Ch. 184, L. 1963.

Amendment

The 1963 amendment increased each of the fees mentioned from \$2.50 to \$3.50.

25-302. (4925) Fees, when payable.

References

Reidelbach v. District Court, 142 M 52, 381 P 2d 470; Clark v. District Court, 142 M 56, 381 P 2d 472.

25-303. (4926) Fees of justices of the peace in criminal actions. The following is the schedule of fees which must be collected by justices of the peace in every criminal action instituted in the justice court, to-wit:

For all services rendered as a committing magistrate where examination is waived, three dollars and fifty cents (\$3.50).

For all services rendered as a committing magistrate where a hearing takes place and witnesses are examined, seven (\$7) dollars.

For all services rendered as a magistrate on a hearing on a complaint to bind over a person to keep the peace, three dollars and fifty cents (\$3.50).

For all services rendered where there is a plea of guilty, three dollars and fifty cents (\$3.50).

For all services rendered where there is a trial, seven (\$7) dollars.

For taking, filing, and approving bail bond, including justification, two (\$2) dollars.

For transmitting papers on appeal, and certificate, including bond and approval, three (\$3) dollars.

For all services in issuing a search warrant, to be paid by the person demanding same, two (\$2) dollars.

The total amount of fees allowed by the board of county commissioners to any one justice of the peace in criminal cases must not exceed seven hundred and fifty dollars (\$750) in any one year.

History: Ap. p. Sec. 4642, Pol. C. 1895; and as Sec. 1, Ch. 52, L. 1903; re-en. Secs. 3175-3176, Rev. C. 1907; superseded by Sec. 3, Ch. 55, L. 1921; re-en. Sec. 4926, R. C. M. 1921; amd. Sec. 2, Ch. 184, L. 1963.

Amendment

The 1963 amendment increased all \$1.00 fees to \$2.00, all \$1.50 fees to \$3.00, all \$2.50 fees to \$3.50, all \$5.00 fees to \$7.00, and the maximum annual total from \$500 to \$750.

Appeal to District Court

Dismissal of defendant's appeal to district court of conviction in justice court on grounds that fees required by this section had not been paid was improper as such fees are a charge against the county in criminal matters. *Reidelbach v. District Court*, 142 M 52, 381 P 2d 470; *Clark v. District Court*, 142 M 56, 381 P 2d 472.

25-306. (4929) Salaries of justices of the peace in certain townships—hours—quarters. Justices of the peace in townships having a population of ten thousand (10,000) people, and not exceeding fifteen thousand (15,000) people, shall each receive a salary of three thousand four hundred dollars (\$3,400.00) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than fifteen thousand (15,000) people, and not exceeding eighteen thousand (18,000) people, shall each receive a salary of three thousand six hundred dollars (\$3,600.00) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than eighteen thousand (18,000) people, shall each receive a salary of four thousand six hundred dollars (\$4,600.00) per annum, payable monthly from the county treasury; justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as "miscellaneous fees" by section 25-304 of this code; justices of the peace in townships having a population of less than ten thousand (10,000) people shall receive the fees and emoluments provided under existing laws; justices of the peace in townships having a population of ten thousand (10,000) people and upwards shall keep their offices open for business from 9 o'clock A.M. to 12 o'clock

M., and from 1 o'clock P.M. to 5 o'clock P.M. on all judicial days, and at such other hours on judicial days as they may desire; providing, however, the office may be closed from 1 o'clock P.M. to 5 o'clock P.M. on Saturdays and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion, select suitable quarters for such justices and may, in its discretion, pay for same from money in the county treasury.

History: En. Sec. 1, Ch. 84, L. 1917; re-en. Sec. 4929, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1949; amd. Sec. 1, Ch. 51, L. 1953; amd. Sec. 1, Ch. 47, L. 1957; amd. Sec. 3, Ch. 184, L. 1963.

Amendments

The 1957 amendment increased the salaries of justices of the peace in townships having a population of 10,000 people and not exceeding 15,000 people from \$2,200 to \$2,800; in townships of more than 15,000 people and not exceeding 18,000 people from \$2,400 to \$3,000; in townships of more than 18,000 people from \$2,900 to \$3,600. The 1957 amendment deleted the words "and not more than twenty-two thousand (22,000) people" which appeared after "(18,000) people" the second time it appears and deleted the words "justices of the peace in townships having a population of more than twenty-two thousand people shall each receive a salary of three thousand two hundred dollars (\$3,200.00), payable monthly from the county treasury; and" which appeared

immediately before the words "justices of the peace in such townships shall receive no other additional fees."

The 1963 amendment increased the salaries of justices in townships of 10,000 to 15,000 people from \$2,800 to \$3,400, in townships of 15,000 to 18,000 from \$3,000 to \$3,600, and in townships of more than 18,000 from \$3,600 to \$4,600.

Repealing Clauses

Section 2 of Ch. 47, Laws 1957 and Sec. 4 of Ch. 184, Laws 1963 repealed all acts and parts of acts in conflict therewith.

False Imprisonment Action Against Sheriff

In an action for false imprisonment against a sheriff and the surety on his official bond on the ground of unnecessary delay, it was essential that the plaintiff prove that a magistrate was actually available on the particular day when the false imprisonment allegedly occurred. *Rounds v. Bucher*, 137 M 39, 349 P 2d 1026.

25-309. (4932) Fees of constable. For serving summons, including copy on each defendant, besides mileage, fifty cents.

For serving subpoena, including copy on each person, besides mileage, twenty cents.

For all services in summoning a jury and taking charge of same, two dollars.

For all services in serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, including all copies, one dollar.

For the expense in taking and keeping possession of or preserving property under attachment, execution, or other process, the same fees and upon the same conditions as allowed to the sheriff.

For taking and receiving undertaking in any case in which he is authorized, one dollar.

For serving every notice, rule or order, besides mileage, including copy, one dollar.

For advertising any property for sale under execution, exclusive of costs of publication, one dollar.

For serving writ of possession, besides mileage, two dollars.

For all services in trial of right of property or damages, besides mileage, three dollars.

For commissions for receiving and paying over money on execution or other process where property has been levied on and sold, two per cent; when collected without sale, one per cent.

For mileage, the same as sheriff and under the same conditions.

For executing in duplicate a certificate of sale exclusive of the fee for filing, one dollar.

For drawing and executing a constable's deed, including acknowledgment, three dollars.

For making every arrest in a criminal proceeding, or executing a search warrant, besides mileage, one dollar and fifty cents.

For all services in summoning and taking charge of a jury, two dollars.

For serving a subpoena, including copy on each person, besides mileage, twenty cents.

For every mile necessarily traveled in executing any warrant, serving subpoena, or taking a person before a magistrate or to jail, the same mileage as in civil actions, and under the same conditions, and in addition, in serving a subpoena or warrant when two or more persons are named in any warrant or subpoena, in the same or different actions in the hands of the officer, and such persons live in the same direction, but one mileage must be charged, as provided for the mileage of sheriffs in civil actions.

When two or more persons are brought before a magistrate or to jail at the same time, or might have been so brought, the officer must be allowed but one mileage.

For conveying a person when under arrest, the actual expense incurred in the transportation of such person must be allowed by the board of county commissioners, but the officer must pay his own expenses out of his mileage.

The total amount of fees allowed in criminal cases by the board of county commissioners must not exceed five hundred dollars (\$500.00) in any one year. The excess must be paid into the contingent fund of the county treasury.

That constables in townships having a population of twelve thousand (12,000) people and not exceeding twenty thousand (20,000) people, shall each receive a salary of \$900.00 per annum, payable monthly from the county treasury. Constables in townships having a population of more than twenty thousand (20,000) people shall each receive a salary of \$2,400.00 per annum, payable monthly from the county treasury, and constables in such townships where the population is twelve thousand (12,000) people and not more than thirty-five thousand (35,000) people shall receive no other fees for civil suits or criminal actions except mileage in the performance of their duties. Any such fees received by the constables shall be turned over to the county treasurer.

History: En. Sec. 4643, Pol. C. 1895; re-en. Sec. 3177, Rev. C. 1907; re-en. Sec. 4932, R. C. M. 1921; amd. Sec. 1, Ch. 152, L. 1935; amd. Sec. 1, Ch. 160, L. 1957.

population of more than twenty thousand from \$1,500 to \$2,400.

Repealing Clause

Section 2 of Ch. 160, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Amendment

The 1957 amendment increased the salary of constables in townships having a

CHAPTER 4—JURORS' AND WITNESSES' FEES

Section 25-401. Jurors' fees.

25-404. Witnesses' fees.

25-401. (4933) Jurors' fees. Grand and trial jurors shall receive ten dollars per day for attendance before any court of record and eight cents per mile each way for traveling from and to their residence and county seat. Any juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice, or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage.

History: En. Sec. 1, Ch. 48, L. 1903; re-en. Sec. 3178, Rev. C. 1907; amd. Sec. 1, Ch. 6, L. 1917; re-en. Sec. 4933; R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1935; amd. Sec. 1, Ch. 9, L. 1945; amd. Sec. 1, Ch. 117, L. 1963.

Amendment

The 1963 amendment increased per diem for attendance from \$6 to \$10 and mileage from "five cents" to "eight cents."

25-404. (4936) Witnesses' fees. For attending in any civil or criminal action or proceeding before any court of record, referee, or officer authorized to take depositions, or commissioners to assess damages or otherwise, for each day, six dollars. For mileage in traveling to the place of trial or hearing, each way, for each mile, eight cents; provided, however, that no officer of the United States, the state of Montana, or of any county, incorporated city or town within the limits of the state of Montana shall receive any per diem when testifying in a criminal proceeding, and that no witness shall receive fees in any more than one criminal case on the same day.

History: En. Sec. 4648, Pol. C. 1895; re-en. Sec. 3182, Rev. C. 1907; re-en. Sec. 4936, R. C. M. 1921; amd. Sec. 2, Ch. 18, L. 1935; amd. Sec. 2, Ch. 117, L. 1963.

Amendment

The 1963 amendment increased per diem allowance from \$3 to \$6 and mileage from "seven cents" to "eight cents."

25-414. (4947) Expert witnesses.**Exclusion from Costs**

Expert witness fees are excluded from

costs in a condemnation case. *State v. Heltborg*, 140 M 196, 369 P 2d 521, 525.

CHAPTER 5—SALARIES OF STATE OFFICERS, DEPUTIES AND EMPLOYEES

Section 25-501. Salaries of elected state officials.

25-501.1. Salary to be for all services.

25-508. Traveling expenses of officers attending conventions.

25-501. Salaries of elected state officials. The annual salaries paid to the various elected officials of the state of Montana shall be as follows:

Governor	\$22,000.00
Chief justice of the supreme court	\$17,000.00
Justices of the supreme court, each	\$16,000.00
Attorney general	\$15,000.00
State auditor	\$10,000.00
Superintendent of public instruction	\$12,500.00
Railroad commissioner	\$10,000.00

State treasurer	\$10,000.00
Secretary of state	\$10,000.00
Clerk of the supreme court	\$ 8,500.00

History: En. Sec. 1, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; amd. Sec. 1, Ch. 212, L. 1963.

Compiler's Note

This section is substituted for prior section 25-501 which was repealed by Sec. 3, Ch. 202, Laws 1959, as the subject-matter is identical.

Title of Act

An act to provide for salary schedules for various elected officials and administrative heads, whatever title they may have, of various boards, bureaus and commissions; making it unlawful to accept a subordinate position at an increased salary to avoid the intent of this act; defining the scope of salaries, but that such scope shall not limit certain longevity pay; repealing sections 25-501, 25-502, 25-503, and 25-505 of the Revised Codes of Montana, 1947; and containing a repealing clause.

Amendments

The 1961 amendment changed the salaries of the chief justice and other justices of the supreme court, from \$11,500.00 to \$12,700.00.

The 1963 amendment increased the governor's salary from \$14,000 to \$22,000, the chief justice's salary from \$12,700 to \$17,000, the other supreme court justices' salaries from \$12,700 to \$16,000, the attorney general's salary from \$9,500 to \$15,000, the salaries of the auditor, railroad commissioner, treasurer, and secretary of state from \$8,000 to \$10,000, the salary of the superintendent of public instruction from \$8,500 to \$12,500, and that of the clerk of the supreme court from \$6,500 to \$8,500.

Repeal

Former section 25-501 (Sec. 1, Ch. 182, L. 1949; amd. Sec. 1, Ch. 237, L. 1955), relating to salaries of state officers, was repealed by Sec. 3, Ch. 202, Laws 1959. Section 1 of Ch. 202, Laws 1959 has been given the same section number and substituted therefor by the compiler.

25-501.1. Salary to be for all services. The salary of each such officer shall be for all services required of him or which may hereafter devolve upon him by law, including all services rendered ex officio as a member of any board, commission or committee, but shall not include actual necessary traveling, lodging and subsistence expenses incidental to his official duties; provided, however, that this provision shall not apply to the salary of the supervisor of the highway patrol so as to deprive him of his length-of-service salary increase as provided by section 31-105 of these codes.

History: En. Sec. 2, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961.

Compiler's Note

Section 1 of Ch. 187, Laws 1961, amended sec. 93-303.

Amendment

The 1961 amendment made no change in this section.

Repealing Clauses

Section 3 of Ch. 202, Laws 1959 read "That sections 25-501, 25-502, 25-503, and 25-505 of the Revised Codes of Montana, 1947, are hereby repealed."

Section 4 of Ch. 202, Laws 1959 and Sec. 3 of Ch. 187, Laws 1961 repealed all acts and parts of acts in conflict therewith.

25-502. (437) Repealed.

Repeal

This section (Sec. 1, Ch. 107, L. 1919; amd. Sec. 2, Ch. 57, L. 1935), relating to the salaries of clerk of board of examiners,

state accountant and clerk of consolidated boards, was repealed by Sec. 3, Ch. 202, Laws 1959.

25-503. (438) Repealed.

Repeal

This section (Sec. 2, Ch. 107, L. 1919), relating to the salaries of state examiner,

his assistants, deputies, clerks and the private secretary to the governor, was repealed by Sec. 3, Ch. 202, Laws 1959.

25-505. (440) Repealed.**Repeal**

This section (Sec. 1, Ch. 40, L. 1915, and as affected by later acts), relating

to the salaries of deputy state officers, was repealed by Sec. 3, Ch. 202, Laws 1959.

25-508. (443) Traveling expenses of officers attending conventions.

(1) Hereafter no state, county, city or school district officer or employee of the state or of any county or city, or of any school district, shall receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance upon any convention, meeting, or other gathering of public officers save and except for attendance upon such convention, meeting or other gatherings as said officer or employee may by virtue of his office find it necessary to attend, and provided further, that the board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees, or any other strictly educational association and authorize the payment of dues to such association, and the necessary traveling expenses of employees, or members of said board, to attend meetings of such association, or other meetings called for the express purpose of considering educational matters.

(2) Provided, further, three (3) members of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance upon any general meeting of county commissioners or assessors held within the state not oftener than once a year and the proportionate expenses and charges against each county as a member of such association shall also be paid; provided also that county attorneys and sheriffs are hereby authorized to attend their respective meeting or convention held within the state and are allowed actual traveling expenses not oftener than once a year for attending same.

(3) Provided, further, that nothing herein shall be construed to prevent any city or town council, commission or other governing body from paying membership fees and dues in any organization of city and town officials whose purpose is improvement of laws relating to city and town government and their better and more economical administration, and the necessary expense of any regular officer or employee of such city or town in attending any convention or meeting of such organization upon the direction of such council, commission, or other governing body by order upon its minutes stating that the public interest requires such attendance; such payment of membership fees, dues and/or expense to be made from such fund of the city or town as the council, commission or other governing body shall direct by such order, upon claim presented, audited and allowed as are other claims against such city or town.

(4) Provided, further, that all county clerk and recorders of the various counties throughout the state of Montana shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana Association of County Clerk and Recorders held within the state, not oftener than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R. C. M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965.

Amendments

The 1957 amendment in subd. (2) substituted "three (3) members" for "one (1) member."

The 1961 amendment in subd. (1) after the words "as said officer" inserted the words "or employee" and also in subd. (1) substituted the words "find it necessary to attend" for the words "be required by law to attend."

The 1963 amendment added subd. (4).

The 1965 amendment substituted "employees, or members of said board" near the end of subd. (1) for "an employee, or one (1) member of said board."

Repealing Clauses

Section 2 of Ch. 184, Laws 1957 and Sec. 2 of Ch. 79, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 3 of Ch. 79, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 4 of Ch. 79, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

CHAPTER 6—SALARIES OF COUNTY OFFICERS, DEPUTIES AND EMPLOYEES

Section 25-605. Salaries of certain county officers.

25-609. Salaries fixed by county commissioners in September of each election year—salaries not subject to change during entire term.

25-605. Salaries of certain county officers. The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county assessors, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries, as provided in section 32-303, Revised Codes of Montana, 1947, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County	Salary Col. A	Taxable Valuation of County	Salary Col. B
Below 3,000	\$2075	Below \$2,000,000	\$2075
3,000 to 3,999	2125	\$2,000,000 to 2,999,999	2125
4,000 to 4,999	2175	3,000,000 to 3,999,999	2175
5,000 to 5,999	2225	4,000,000 to 4,999,999	2225
6,000 to 6,999	2275	5,000,000 to 5,999,999	2275
7,000 to 7,999	2425	6,000,000 to 6,999,999	2425
8,000 to 8,999	2475	7,000,000 to 7,999,999	2475
9,000 to 9,999	2525	8,000,000 to 9,999,999	2525
10,000 to 12,499	2575	10,000,000 to 11,999,999	2575
12,500 to 14,999	2625	12,000,000 to 13,999,999	2625
15,000 to 17,499	2675	14,000,000 to 15,999,999	2675
17,500 to 19,999	2725	16,000,000 to 17,999,999	2725
20,000 to 24,999	2775	18,000,000 to 19,999,999	2775

25,000 to	29,999	2825	20,000,000 to	22,499,999	2825
30,000 to	39,999	2875	22,500,000 to	24,999,999	2875
40,000 to	49,999	2950	25,000,000 to	29,999,999	2950
50,000 to	59,999	3050	30,000,000 to	34,999,999	3050
60,000 to	69,999	3150	35,000,000 to	39,999,999	3150
70,000 to	79,999	3250	40,000,000 to	44,999,999	3250
80,000 to	89,999	3350	45,000,000 to	49,999,999	3350
90,000 to	99,999	3450	50,000,000 to	54,999,999	3450
100,000 and over		3550	55,000,000 to	59,999,999	3550
			60,000,000 to	64,999,999	3550
			65,000,000 to	69,999,999	3550
			70,000,000 to	74,999,999	3550
			75,000,000 to	79,999,999	3550

The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county assessors, county superintendents of schools, and county surveyors in counties where county surveyors receive salaries, as provided in section 32-303, Revised Codes of Montana, 1947, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; provided, however, that county superintendents of schools shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of four hundred dollars (\$400) per year.

History: En. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 66, L. 1959; amd. Sec. 1, Ch. 195, L. 1961; amd. Sec. 1, Ch. 216, L. 1965.

Amendments

The 1957 amendment added county attorneys and sheriffs to the list of county officers; increased all salaries (for comparison, see parent volume); under Population of County substituted "80,000 to 89,999" for "80,000 and over" and added "90,000 to 99,999" and "100,000 and over"; under Taxable Valuation of County added the last two classifications and deleted from the last paragraph a proviso which read "provided that the minimum salary to be paid under the foregoing schedule will not be less than twenty-nine hundred eight (\$2908.00) dollars per annum."

The 1959 amendment added the classifications "70,000,000 to 74,999,999" and "75,000,000 to 79,999,999" under the Taxable Valuation of County and added the corresponding salary in Column B for those classifications.

The 1961 amendment in the first and last paragraphs after the words "county treasurers," deleted the words "county clerks," and inserted the words "clerk and recorder, clerk of the court"; increased the salary amounts in both Column A and Column B (except for assessed valuation

of \$65,000,000 and above) from \$1,614 to \$1,825, from \$1,682 to \$1,875, from \$1,752 to \$1,925, from \$1,822 to \$1,975, from \$1,905 to \$2,025, from \$1,948 to \$2,175, from \$2,012 to \$2,225, from \$2,076 to \$2,275, from \$2,196 to \$2,325, from \$2,263 to \$2,375, from \$2,329 to \$2,425, from \$2,395 to \$2,475, from \$2,406 to \$2,525, from \$2,494 to \$2,575, from \$2,572 to \$2,625, from \$2,663 to \$2,700, from \$2,755 to \$2,800, from \$2,849 to \$2,900, from \$2,944 to \$3,000, from \$3,052 to \$3,100, from \$3,114 to \$3,200, from \$3,176 to \$3,300, and from \$3,263 (for assessed valuation of \$60,000,000 to \$64,999,999) to \$3,300; and reduced the salary amounts in the last three lines of Column B from \$3,325, \$3,419, and \$3,513, respectively, to \$3,300.

The 1965 amendment increased all amounts set forth in the schedules by \$250; and added the proviso at the end of the section.

Repealing Clauses

Section 2 of Ch. 22, Laws 1957 read "That sections 25-606 and 25-607, Revised Codes of 1947, as amended by section 2 and section 3 of chapter 222, Session Laws of 1953, and all other acts and parts of acts in conflict herewith are hereby repealed."

Section 2 of Ch. 66, Laws 1959 and Sec. 2 of Ch. 195, Laws 1961 repealed all acts and parts of acts in conflict therewith.

25-606, 25-607. Repealed.**Repeal**

These sections (Secs. 2, 3, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Secs. 2, 3, Ch. 222, L. 1953), relating to

the salary of sheriff and county attorney, were repealed by Sec. 2, Ch. 22, Laws 1957.

25-609. Salaries fixed by county commissioners in September of each election year—salaries not subject to change during entire term. In September of any year in which the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, county attorney, or clerk of the district court is to be elected, the county commissioners shall, by resolution, fix the salaries of the officials to be elected in conformity with the schedule in section 25-605, based on the population as shown in the last decennial federal census and on the taxable valuation of the county at the time the salaries are fixed. When so fixed, the salaries shall not be changed during the entire term for which such officials are elected regardless of any change in population or taxable valuation of the county during such term. If a vacancy occurs in any office, the person who is appointed or elected to fill the unexpired term in the office vacated shall receive the same salary as the person vacating the office.

History: En. Sec. 5, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 4, Ch. 222, L. 1953; amd. Sec. 1, Ch. 98, L. 1963.

taxable valuation of the county during such term" to the present second sentence; and made minor changes in phraseology in the second and third sentences.

Amendment

The 1963 amendment divided the former second sentence into the present second and third sentences; added the words "regardless of any change in population or

Repealing Clause

Section 2 of Ch. 98, Laws 1963 repealed all acts and parts of acts in conflict therewith.

TITLE 26—FISH AND GAME

- Chapter 1. Fish and game commission and wardens—creation—powers and duties, 26-102 to 26-105, 26-107, 26-111, 26-114, 26-115, 26-121, 26-123, 26-135, 26-136.
2. Fishing and hunting licenses, 26-201, 26-202.1, 26-202.2, 26-202.3, 26-202.5, 26-215, 26-222, 26-225 to 26-228.
 3. Restrictions on taking fish and game—open and closed seasons, 26-301, 26-302, 26-303.1, 26-303.2, 26-303.3, 26-303.4, 26-307, 26-321, 26-332.
 4. Beaver—trapping—license—protection, 26-401.
 5. Protection of certain wild birds—sale of confiscated birds and animals, 26-510 to 26-512.
 7. Shipment of animals from state, 26-701, 26-708.
 8. Miscellaneous prohibitions, 26-811.
 9. Outfitter's license—taxidermist's license, 26-907.
 15. Construction and hydraulic projects affecting fish and game, 26-1501 to 26-1507.
 16. Shooting preserves, 26-1601 to 26-1614.

CHAPTER 1—FISH AND GAME COMMISSION AND WARDENS— CREATION—POWERS AND DUTIES

- Section 26-102. Districts for appointment of members of commission.
26-103. Meetings.
26-104. Powers and duties of commission.
26-105. Compensation of commissioners.
26-107. State fish and game wardens—appointment—qualifications.
26-111. Oath of state fish and game director and wardens.
26-114. Appointment of ex officio state fish and game wardens.
26-115. Superintendent of state fisheries—appointment.
26-121. State fish and game moneys.
26-123. Salaries, per diem and expenses, how paid.
26-135. Wild animals damaging property—investigation—special season—destruction by commission—allowing holders of property to kill.
26-136. Meat of wild animals so killed—disposition.

26-102. (3651) Districts for appointment of members of commission.

(1). * * * [Same as parent volume.]

(2) One member of the commission shall be appointed from each of the foregoing districts by the governor of the state of Montana with the consent of the senate. In each year when there is an appointment, it shall be made by the first day of February. The selection of said members shall be made without regard to political affiliation but for the sole welfare of the fish and game and wildlife of the state. No person shall be appointed a member of said commission unless he shall be informed or interested and experienced in the subject of wildlife, fish and game, and the requirements for the conservation and protection of fish, game, and game birds and animals.

(3) and (4). * * * [Same as parent volume.]

(5) Vacancies occurring in the fish and game commission shall be filled by the governor with the consent of the senate in the same manner and from the districts in which such vacancies occur.

(6). * * * [Deleted.]

History: En. Sec. 2, Ch. 193, L. 1921; re-en. Sec. 3651, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1941; amd. Sec. 1, Ch. 29, L. 1965; amd. Sec. 46, Ch. 177, L. 1965.

Compiler's Note

This section was amended twice in 1965, once by Ch. 29 and once by Ch. 177. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the two acts do not appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

26-103. (3652) Meetings. The members of the commission shall within thirty (30) days after their appointment and annually thereafter meet and organize by electing from its membership a chairman and shall hold quarterly or other meetings for the transaction of business, at such times and places it may deem necessary and proper, said meetings to be called by the chairman, or by a majority of the commission, and to be held at the time and place specified in the call for the same. A majority of the members of the commission shall constitute a quorum for the transaction of any business which may come before it. The said commission shall keep a record of all the business transacted by it. The chairman and secretary, hereinafter designated, shall sign all orders, minutes or documents for the commission. The principal offices of the commission shall be located near the capitol building in Helena, and suitable and adequate rooms therefor, together with janitor services, light, heat and water shall be furnished by the state of Montana, rental shall be charged at two dollars (\$2.00) per square foot per year for the total space occupied. Such charge to the commission shall be in effect until such time as the commission shall provide other building or buildings. Such rental collected shall be deposited to the credit of the state general fund.

History: En. Sec. 3, Ch. 193, L. 1921; re-en. Sec. 3652, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1923; amd. Sec. 1, Ch. 192, L. 1925; amd. Sec. 1, Ch. 114, L. 1945; amd. Sec. 1, Ch. 52, L. 1957; amd. Sec. 1, Ch. 119, L. 1959; amd. Sec. 23, Ch. 271, L. 1963.

Amendments

The 1957 amendment substituted "near the capitol building" for "in the capitol building" in the fifth sentence; added "until such time as the commission shall provide other building or buildings" at the end of the fifth sentence; and added a sentence reading, "The commission, upon the approval of the board of examiners, is empowered to construct, acquire, erect, equip, enlarge and improve or purchase buildings suitable for its needs to be located at the seat of the state government."

Amendments

Chapter 29, Laws of 1965, inserted "with the consent of the senate" at the end of the first sentence of subsection (2) and in subsection (5); inserted the second sentence of subsection (2); and deleted from the end of subsection (2) a sentence pertaining to the appointment of the first members of the commission.

Chapter 177, Laws of 1965, deleted a former subsection (6), for text of which see parent volume.

The 1959 amendment deleted "necessary furnishings" which preceded "janitor services" in the fifth sentence; deleted from the end of the fifth sentence the words "without charge to the commission until such time as the commission shall provide other building or buildings"; added a sentence reading, "Rental shall be charged at two dollars (\$2.00) per square foot per year for the total space occupied"; and added what are now the final two sentences.

The 1963 amendment combined the fifth and sixth sentences into one; deleted the sentence added by the 1957 amendment; and made a minor change in punctuation.

Repealing Clauses

Section 2 of Ch. 52, Laws 1957 and Sec. 2 of Ch. 119, Laws 1959 repealed all acts and parts of acts in conflict therewith.

26-104. (3653) Powers and duties of commission.

(1) to (9). * * * [Subsections (1) to (9), same as parent volume.]

(10) It shall have the authority to purchase and maintain at the expense of the state fish and game fund suitable fish screens or fish wheels, or other devices, to install in irrigating ditches to prevent fish entering said ditches.

(11) and (12). * * * [Same as parent volume.]

(13) It shall have authority to acquire by purchase, condemnation, lease, agreement, gift, or devise, or to acquire easements upon, lands or waters suitable for the purposes hereinafter enumerated, and develop, operate and maintain the same for said purposes: (a) For fish hatcheries, nursery ponds, or game farms; (b) Lands or waters suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection; (c) For public hunting, fishing, or trapping areas to provide places where the public may hunt, trap, or fish in accordance with the provisions of law or the regulations of the commission; (d) To extend and consolidate by exchange lands or waters suitable for the above purposes; (e) To capture, propagate, transport, buy, sell, or exchange any species of game, bird, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes, or to exercise control measures of undesirable species. It shall further have full authority to dispose of lands and waters acquired by it on such terms after such public notice, and without regard to other laws of this state which provide for sale or disposal of state lands, and with or without reservation, as it deems necessary and advisable, provided that notice of sale describing the lands or waters to be disposed of shall be published once a week for three (3) successive weeks in a newspaper with general circulation printed and published in the county wherein the lands or waters are situated, or if no newspaper be printed and published in such county then in any newspaper with general circulation in such county, advertising for cash bids to be presented to the commission or its director within thirty (30) days from the date of the first publication, each bid to be accompanied by a cashiers check or cash deposit in an amount equal to ten per cent (10 %) of the amount bid; the highest bid shall be accepted upon payment of the balance due within ten (10) days after mailing notice by registered mail to the highest bidder; if such bidder shall default on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed; thereupon deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification; the commission shall reserve the right to reject any or all bids which do not equal or exceed the full market value of such lands and waters as determined by the commission; the commission shall convey such lands and waters by deed without covenants of warranty, executed by the governor, or in his absence or disability by the lieutenant governor, attested by the secretary of state, and further countersigned by the chairman of the state fish and game commission, attested by the secretary of the commission, and have the great seal of the state of Montana and the seal of the state fish and game commission thereto affixed, but need not be acknowledged.

(14). * * * [Same as parent volume.]

(15) It shall have authority to fix seasons, bag limits, possession limits and season limits; to open or close, shorten or lengthen seasons on any species of game, bird, fish or fur-bearing animal as defined by section 26-201 of this code, and to declare areas open to the hunting of deer, antelope and elk by bow and arrow permit holders, and during times when only bow and arrows may be used, to hunt deer, antelope and elk in such areas; it is authorized to declare areas open to deer hunting where shotguns only may be used to hunt or kill deer; and it is authorized to declare areas which may be open to special license holders only, and issue special licenses in a limited number when it shall determine, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish or animals, or fur-bearing animals, or to declare such a special season and issue special licenses whenever game birds or animals or fur-bearing animals are causing damage to private property, or when written complaint of such damage has been filed with the state fish and game commission by the owner of such property, and in determining to whom such licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system.

(16) to (24). * * * [Subsections (16) to (24), same as parent volume.]

(25) It shall have authority to promulgate and enforce rules and regulations governing uses of lands acquired, or held under easement, by the commission, or lands which it operates under agreement with or in conjunction with a federal or state agency or private owner. Such rules shall be promulgated in the interest of public health, public safety and protection of property in regulating the use of these lands. Provided further all lease and easement agreements shall itemize uses as listed in subparagraph 13, section 26-104, R. C. M. 1947.

(26) It shall have authority to promulgate and enforce rules and regulations governing recreational uses of public fishing reservoirs and lakes constructed by the commission or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner.

Such rules shall be promulgated in the interest of public health, public safety and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, water skiing, surf boarding, picnicking, camping, sanitation and use of firearms on such reservoirs or at designated areas along the shore of such reservoirs. These rules shall be subject to review and approval by the state board of health as to public health and sanitation before becoming effective. Copies of such rules shall show such endorsement.

History: En. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; amd. Sec. 1, Ch. 157, L. 1941; Subsec. (24) added by Sec. 1, Ch. 40, L. 1951; Subsec. (15) amd. Sec. 1, Ch. 157, L. 1955; Subsec. (25) added by Sec. 1, Ch. 151, L. 1957;

amd. Sec. 1, ch. 36, L. 1959; Subsec. (26) added by Sec. 1, Ch. 96, L. 1959; amd. Sec. 1, Ch. 173, L. 1965.

Compiler's Note

This section was amended twice by the 1959 legislature, once by Ch. 36, approved February 25, 1959 and once by Ch. 96,

approved March 2, 1959. Neither amendment carried a specific effective date nor did either act mention the amendment by the other act. As each act amended the section in different particulars the changes made by each are incorporated in this section by the compiler.

Amendments

The 1957 amendment added subsec. (25) which read: "(25) It shall have authority to take rough fish of the following species: carp, suckers, catfish, buffalo, bullheads, goldeye, drum and squaw fish from the waters of Fort Peck Reservoir, by means of day labor, contract or permit, through the use of seines, or nets under such rules, regulations, contracts or permit as the commission shall prescribe. All rough fish so removed by the commission, by permit or contract, shall be disposed of in such form and in such manner, by sale or otherwise, as the commission, by its regulations, contracts or permits shall prescribe."

The 1959 amendment by Ch. 36 in subsec. (10) deleted the word "them" which appeared between the words "install" and "in"; inserted provision in subsec. (15) for hunting of "antelope and elk" with bow and arrow, and deleted subsec. (25) added by the 1957 amendment.

The 1959 amendment by Ch. 96 added subsec. (26) to this section.

The 1965 amendment inserted "or to acquire easements upon" near the beginning of subsection (13); added the second sentence to subsection (13); inserted "possession limits and season limits" near the beginning of subsection (15); substituted "game birds, fish or animals, or fur-bearing animals" for "game animals" after "maintenance of an adequate supply of" in subsection (15); substituted

"game birds or animals or fur-bearing animals" for "game animals" before "are causing damage" in subsection (15); inserted a new subsection (25); inserted "or in conjunction with" before "a federal or state agency" near the end of the first paragraph of subsection (26); and inserted "hunting, fishing, trapping" and "including but not limited to boating speed regulations" in the first sentence of the second paragraph of subsection (26).

Repealing Clauses

Section 2 of Ch. 151, Laws 1957 and Sec. 2 of Ch. 96, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 173, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

Subd. 4

Construction and Application

Where an employee of the state fish and game commission was summarily dismissed by the commission without sufficient notice, he was entitled to relief by way of mandamus, even though, subsequent to the discharge, he was given notice that a hearing on his dismissal would be held. *State ex rel. Opheim v. State Fish & Game Comm.*, 133 M 362, 323 P 2d 1116, 1118.

The power of discharge must be "for cause" and there is no distinction between officers and employees, and removal may be effected only after notice of the charges made has been given and the person involved has been given an opportunity to be heard in his defense. *State ex rel. Opheim v. State Fish & Game Comm.*, 133 M 362, 323 P 2d 1116, 1119.

26-105. (3654) Compensation of commissioners. The members of the commission shall receive no compensation for their services as members thereof, except a per diem of fifteen dollars (\$15.00) for each member for every day in actual attendance at the meetings of said commission, or in the execution of their duties as members of said commission; provided, however, that in no instance shall any member of said commission other than the chairman receive as said per diem a sum in excess of one thousand dollars (\$1,000.00) in any one (1) year, provided that the chairman of the commission shall not receive a sum in excess of one thousand five hundred dollars (\$1,500.00) in any one (1) year, and the members of said commission shall be allowed their actual and necessary traveling expenses, while performing their duties as members of said commission which shall be paid from the fish and game fund of the state of Montana upon presentation of proper vouchers therefor.

History: En. Sec. 5, Ch. 193, L. 1921; re-en. Sec. 3654, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1949; amd. Sec. 1, Ch. 6, L. 1951; amd. Sec. 1, Ch. 127, L. 1953; amd. Sec. 1, Ch. 57, L. 1957; amd. Sec. 1, Ch. 238, L. 1965.

Amendments

The 1957 amendment inserted the words "other than the chairman"; substituted "eight hundred dollars (\$800.00)" for "six hundred dollars (\$600.00)" and inserted the words "provided that the chairman of the commission shall not receive a sum in excess of one thousand dollars (\$1,000.00) in any one (1) year."

The 1965 amendment increased the total annual per diem allowed to members of the commission from \$800 to \$1,000 and the amount allowed to the chairman from \$1,000 to \$1,500.

Repealing Clause

Section 2 of Ch. 57, Laws 1957 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 57, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 27, 1957.

26-107. (3656) State fish and game wardens—appointment—qualifications. The director, by and with the consent and approval of the commission, shall have the power to employ and appoint a deputy director, and a sufficient number of state fish and game wardens for the proper enforcement of the fish and game laws of the state, and the orders, rules and regulations of the commission, and for such other purposes as the director may designate. State fish and game wardens shall be selected from applicants who have passed such an examination as may be required according to the rules adopted and promulgated by the commission. No person shall be appointed a state fish and game warden until a certificate shall have been issued to him by the commission to the effect that he has passed the required examination and is a fit and proper person to perform the duties of the office. State fish and game wardens employed and appointed by virtue of this act shall be persons who have an interest in protection, conservation and propagation of wildlife, game and fur-bearing animals, fish and game birds; they shall devote all of their time to their official duties.

History: En. Sec. 7, Ch. 193, L. 1921; re-en. Sec. 3656, R. C. M. 1921; amd. Sec. 4, Ch. 192, L. 1925; amd. Sec. 3, Ch. 59, L. 1927; amd. Sec. 1, Ch. 158, L. 1941; amd. Sec. 1, Ch. 121, L. 1947; amd. Sec. 1, Ch. 58, L. 1951; amd. Sec. 1, Ch. 78, L. 1955; amd. Sec. 1, Ch. 77, L. 1957.

Amendment

The 1957 amendment inserted the words "fish and" before the words "game ward-

ens" each time they appear in this section and deleted the words "who shall have previously served as a state game warden," which appeared after the words "deputy director" in the first sentence.

Repealing Clause

Section 2 of Ch. 77, Laws 1957 repealed all acts and parts of acts in conflict therewith.

26-108. (3657) Employees of the commission—removal, etc.

Removal of Employee

This section does not require that the director hold a hearing before discharging an employee for cause but merely requires that the employee have an opportunity for hearing before the commission. State ex rel. Hollibaugh v. State Fish and Game Commission, 139 M 384, 365 P 2d 942, 947.

The fish and game commission did not act arbitrarily in discharging a state

fish and game warden where the evidence showed his incompetency. State ex rel. Hollibaugh v. State Fish and Game Commission, 139 M 384, 365 P 2d 942, 947.

Misconduct need not be so serious as to support a criminal conviction in order to furnish cause for removal of an employee. State ex rel. Hollibaugh v. State Fish and Game Commission, 139 M 384, 365 P 2d 942, 948.

26-110. (3659) Qualifications, powers and duties of game wardens.**Operation and Effect**

This section has reference only to what the legislature denounced as unlawful possession under section 26-503, and for which the accused could be prosecuted for unlawful possession. *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 302.

Where plaintiff lawfully killed a deer

but failed to fill out the tag attached to his hunting license and attach it to the carcass, the deer was not unlawfully possessed and the game warden was without authority to seize and confiscate the carcass when he arrested plaintiff for failure to attach the tag. *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 302.

26-111. (3660) Oath of state fish and game director and wardens.

Before entering upon his official duties, the state fish and game director and state fish and game wardens shall take and subscribe the constitutional oath of office and shall in addition thereto swear, or affirm, that he holds no other position or office, nor any position under any political committee or party. Such oath or affirmation shall be filed in the office of the secretary of state.

History: En. Sec. 11, Ch. 193, L. 1921; re-en. Sec. 3660, R. C. M. 1921; amd. Sec. 14, Ch. 177, L. 1965.

subsection (1); substituted "game director and state fish and game wardens" in the first sentence for "game warden and deputy wardens"; and deleted a former subsection (2), relating to bonds, for text of which see parent volume.

Amendment

The 1965 amendment reenacted former

26-114. (3663) Appointment of ex officio state fish and game wardens. All sheriffs and their deputies, constables, all peace officers of the state, or any subdivision thereof, and all state forest officers, and such other officers of the United States forest service or agents of the United States fish and wildlife service which are assigned to duty in this state, and field personnel fish and game commission, as the director, with the approval of the state fish and game commission, may appoint are hereby made ex officio state fish and game wardens, without pay, except that the commission may, in its discretion, allow actual and necessary traveling expenses, which, if allowed, shall be paid upon proper vouchers from the state fish and game funds, and shall have the same powers with reference to the enforcement of the fish and game laws of this state as regularly appointed state fish and game wardens, and it is hereby made their duty to assist, whenever possible, in the enforcement of said laws.

History: En. Sec. 14, Ch. 193, L. 1921; re-en. Sec. 3663, R. C. M. 1921; amd. Sec. 1, Ch. 115, L. 1955; amd. Sec. 1, Ch. 236, L. 1965.

Amendment

The 1965 amendment inserted "and field personnel fish and game commission" after "assigned to duty in this state."

26-115. (3664) Superintendent of state fisheries—appointment. The state fish and game director shall have general supervision over all hatcheries in the state, and shall with the consent and approval of the commission appoint and employ a superintendent of fisheries, who shall be a competent person and a skilled fish culturist. The output of all state hatcheries shall be used to stock the lakes and streams of the state and shall be for free and impartial distribution within the state, such distribution to be under the direction of said superintendent of fisheries subject to an official order of the state fish and game director. The state fish and game director shall have the power to exchange spawn or fish with other states or persons for distribution in this state.

History: En. Sec. 15, Ch. 193, L. 1921; re-en. Sec. 3664, R. C. M. 1921; amd. Sec. 8, Ch. 192, L. 1925; amd. Sec. 2, Ch. 81, L. 1951; amd. Sec. 15, Ch. 177, L. 1965.

Amendment

The 1965 amendment substituted "fish and game director" for "fish and game warden" in three places; and deleted two final sentences reading, "Before entering upon his official duties the superintendent so appointed and employed by said fish and game warden shall execute and file

a bond with the secretary of state, in the sum of two thousand dollars (\$2,000.00) with sureties thereon, approved by the state treasurer, to the state of Montana, conditioned for the faithful performance of his official duties, and that he will account for and pay over, pursuant to law, all moneys received by him. He shall be reimbursed for the premium on said bond from the fish and game fund of the state, upon presentation of a proper voucher therefor."

26-118. (3667) State fish and game commission to control, etc.

Cross-Reference

Protection of fishing streams against

construction and hydraulic projects, secs. 26-1501 to 26-1507.

26-121. (3670) State fish and game moneys. (1) All moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from fines, damages collected for violations of the fish and game laws of this state, from the appropriations, or received by the commission from any other state source, shall be turned over to the state treasurer, and placed by him in the earmarked revenue fund to the credit of the fish and game commission, provided that out of any fines imposed by a court for the violation of this act, the costs of prosecution shall be paid to the county where the trial was held, in any case where the fine is not imposed in addition to the costs of prosecution. Any moneys received from federal sources shall be deposited in the federal and private revenue fund to the credit of the fish and game commission.

(2) Said moneys are hereby exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses and expenditures of every source and kind whatsoever, authorized to be made by the state fish and game commission under the terms of this act, and said moneys shall be expended for any and all such purposes, by said commission, subject to appropriation by the legislative assembly of each session; provided, however, that all equipment, printing, materials and supplies of every nature required for the administration and operation of the state fish and game commission must be requisitioned for through the state purchasing agent, and the state purchasing agent shall purchase all necessary equipment, printing, materials and supplies of every nature required for the administration and operation of the state fish and game commission, without charge to the commission for such services.

(3) The fish and game fund is abolished. Any reference to the fish and game fund in this code shall be taken to mean fish and game moneys in the earmarked revenue fund and federal and private revenue fund.

History: En. Sec. 21, Ch. 193, L. 1921; re-en. Sec. 3670, R. C. M. 1921; amd. Sec. 32, Ch. 59, L. 1927; amd. Sec. 1, Ch. 53, L. 1933; amd. Sec. 2, Ch. 114, L. 1945; amd. Sec. 159, Ch. 147, L. 1963.

Amendment

The 1963 amendment made numerous changes and additions in this section. For section prior to amendment, see parent volume.

26-123. (3672) Salaries, per diem and expenses, how paid. All salaries, per diem, expenses and claims incurred by the state fish and game

commission, or any person appointed or employed by them, shall be paid out of the state fish and game funds, upon warrants properly drawn thereon; provided, however, that the aggregate of all salaries, per diem, expenses and claims presented for payment shall not exceed at any time the total amount in said state fish and game fund. The state fish and game commission shall approve all bills properly presented which have been incurred under its authority and by its direct order. The expenses of all deputy state fish and game wardens (state fish and game wardens) shall be approved by the state fish and game warden (director), before they are paid, and the salary, per diem or expenses of any employee employed in the propagation or distribution of fish shall be approved by the superintendent of state fisheries, before they are paid. All items of expense, amounting to more than one and one-half dollars incurred by any one employed in the state fish and game department, shall be evidenced by a proper voucher or receipt, before they shall be approved, allowed, or paid.

History: En. Sec. 23, Ch. 193, L. 1921; re-en. Sec. 3672, R. C. M. 1921; amd. Sec. 17, Ch. 97, L. 1961.

Amendment

The 1961 amendment deleted the words "shall be allowed by the state board of examiners, upon the presentation of prop-

er vouchers therefor, and" which appeared before "shall be paid" in the first part of the first sentence; and adopted in parentheses the words "State fish and game wardens" and "director" which had been inserted in brackets in the third sentence by the compiler of Replacement Volume 2 of the Revised Codes.

26-135. Wild animals damaging property—investigation—special season—destruction by commission—allowing holders of property to kill. Upon the request or complaint of any landholder, or person in possession and having charge of any land in the state, that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the said property or crops thereon, the state fish and game department shall investigate and study the situation with respect to damage and depredation. The department may then decide to open a special season on the said game, or if the special season method be not feasible, then the department may destroy the animals causing the damage. Provided, further, that the fish and game department may authorize and grant the holders of said property permission to kill or destroy a specified number of the animals causing the damage. Provided, further, no wild ferocious animal damaging property or endangering life shall be covered by this act.

History: En. Sec. 1, Ch. 60, L. 1957.

Title of Act

An act authorizing the destruction of game animals causing property damage, and providing for the supervision, control

and disposition thereof by the state fish and game department; repealing all acts and parts of acts, in conflict herewith; and providing for an effective date of this act.

26-136. Meat of wild animals so killed—disposition. Provided, further, that the meat of all animals so killed or destroyed by the fish and game department or the authorized landholder shall be conserved and given to state institutions or to the school lunch programs, or welfare department. It shall be the duty of the fish and game department to provide transportation and distribution of the meat killed under the authorization of this act.

History: En. Sec. 2, Ch. 60, L. 1957.

Effective Date

Repealing Clause

Section 3 of Ch. 60, Laws 1957 repealed all acts or parts of acts in conflict therewith.

Section 4 of Ch. 60, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 1, 1957.

CHAPTER 2—FISHING AND HUNTING LICENSES

Section 26-201.	Definitions.
26-202.1.	Licenses—fees—classifications of licenses—fees and powers under licenses.
26-202.2.	Special licenses—tagging of carcasses of game animals.
26-202.3.	Defining resident.
26-202.5.	Provision for nonresident bear license.
26-215.	Exemption from general provisions.
26-222.	Compensation—duties.
26-225.	Reciprocal fishing privileges of licensees of bordering states—agreements authorized.
26-226.	Devices and equipment used under reciprocal privilege.
26-227.	Bodies of water covered by reciprocal privileges.
26-228.	Rules and regulations to implement reciprocal agreements—violations.

26-201. (3681) Definitions. For the purpose of this act, the following shall be construed, respectively to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and single line or single rod in hand or within immediate control.

Upland game birds. Sharptail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes, or jacksnipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed nongame birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, bear and bison or buffalo.

Fur-bearing animals. Marten or sable, otter, muskrat, fisher, mink, beaver and black-footed ferret.

Predatory animals. Coyote, wolf, wolverine, mountain lion, weasel, skunk and civetcat, and bobcat.

Game fish. All species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus strizostedion [stizostedion] (sandpike or sauger and walleyed pike or yellow pike perch); all species of the genus esox (northern pike, pickerel and muskellunge); all species of the genus micropeterus (bass); and all species of the genus polyodon (paddlefish).

History: En. Sec. 1, Ch. 238, L. 1921; re-en. Sec. 3681, R. C. M. 1921; amd. Sec. 3, ch. 77, L. 1923; amd. Sec. 12, Ch. 192, L. 1925; amd. Sec. 6, Ch. 59, L. 1927; amd. Sec. 1, Ch. 37, L. 1949; amd. Sec. 1, Ch. 36, L. 1951; amd. Sec. 1, Ch. 121, L. 1951; amd. Sec. 1, Ch. 19, L. 1953; amd. Sec. 1, Ch. 34, L. 1959; amd. Sec. 1, Ch. 11, L. 1965; amd. Sec. 1, Ch. 28, L. 1965.

Compiler's Note

This section was amended twice in 1965, once by Ch. 11 and once by Ch. 28. Except for a correction in the definition of "Commission" made by both, neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to be in conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts.

Amendments

The 1959 amendment added "chukar partridge" to the definition of "upland game birds"; deleted "fox" from the definition of "furbearing animals," adding "Canada lynx and black-footed ferret," and deleted "lynx" and "black-footed ferret" from the definition of "predatory animals."

Chapter 11, Laws 1965, substituted "The" for "That" in the definition of "Commission" and deleted "Canada lynx" from the definition of "Fur-bearing animals."

Chapter 28, Laws 1965, substituted "The" for "That" in the definition of "Commission"; substituted "hook and single line or single rod in hand or within immediate control" for "hook and line or rod in hand" in the definition of "Angling or fishing"; deleted "all species of the family thymallidae (grayling)" and "all species of the family coregonidae (whitefish)" from the definition of "Game fish"; and added "all species of the genus polyodon (paddlefish)" to the definition of "Game fish."

Repealing Clauses

Section 2 of Ch. 34, Laws 1959 and Sec. 2 of Ch. 11, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 11, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 8, 1965.

26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses. (1) Class A License—Resident Fishing License. Upon payment of a fee of three dollars (\$3.00) the applicant who qualifies therefore shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 License—Resident Game Bird License. Except as herein provided, any resident person of Montana who is twelve (12) years of age or older, may, upon payment of a fee of two dollars (\$2.00) receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) On and after January 1, 1964 no hunting licenses shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may co-operate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, or B-4 license; may upon payment of an additional sum of two dollars (\$2.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5 Licenses. Any holder of a Class A-1 license who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to any one or more of the following licenses: Class A-3, Deer A Tag, one dollar (\$1.00); Class A-4, Deer B Tag, one dollar (\$1.00); Class A-5, Elk Tag, one dollar (\$1.00); which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission. Any holder of a Class A-3, A-4 or A-5 license shall further be entitled to pursue, hunt, shoot and kill game bear and possess the dead bodies of game bear which are so authorized by regulations of the commission.

(5) Class B License—Nonresident Fishing License. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of ten dollars (\$10.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Any nonresident of the state of Montana or any person who has been a resident citizen for less than six (6) months, upon payment of the sum of twenty-five dollars (\$25.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

(7) Class B-2 License—Nonresident Big Game License. Any nonresident of the state of Montana, or any person who has been a resident citizen for less than six (6) months, upon the payment of the sum of

one hundred dollars (\$100.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B-2 license which shall authorize the holder to pursue, hunt, shoot, and kill game animals in the area or areas designated in the license, as determined by the commission, and to possess the carcasses of same, and to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as may hereinafter be authorized by the rules and regulations of the commission.

(8) Class B-3 License—Temporary Nonresident or Tourist License. Any nonresident of the state of Montana, upon payment of the sum of three dollars (\$3.00) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days from and after the issuance of such license.

(9) Special Licenses. Any applicant who is the holder of a Class A-1 resident bird license or any applicant who is the holder of a Class B-2 nonresident big game license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, twenty-five dollars (\$25.00).

Mountain Goat, five dollars (\$5.00).

Mountain Sheep, fifteen dollars (\$15.00).

Bison or Buffalo, twenty-five dollars (\$25.00).

Antelope, one dollar (\$1.00).

In the event that the number of applications received from holders of Class A-1 resident bird licenses and Class B-2 nonresident big game licenses exceeds the number of special licenses which the fish and game commission desires to issue in any hunting district, then the number of special licenses issued to the holders of Class B-2 nonresident big game licenses shall not exceed ten per cent (10 %) of the total issued. Any holder of a special license as herein provided shall be further entitled to pursue, hunt, shoot and kill game bear and possess the dead bodies of game bear which are so authorized by regulations of the commission.

(10) Class C License—Trapper's License. Any holder of a Class A-1 license, upon making application and paying the sum of ten dollars (\$10.00) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap furbearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(11) Class C-1 License—Land Owner's Trapper's License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar (\$1.00) shall be entitled to a land owner's trapper's license which shall entitle the holder thereof

to trap any furbearing animal, on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(12) Exception. (a) A resident under the definition of section 26-202.3, R. C. M. 1947, who is seventy (70) years or older shall be entitled to fish without a Class A license and hunt game birds without a Class A-1 license. He shall carry proof of age in lieu of the license.

(b) A child residing at the Montana children's center at Twin Bridges and the committed residents of the Montana training center at Boulder will be entitled to fish without a license. He shall carry a written statement by the superintendent of the center in lieu of the license.

(c) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965.

Compiler's Notes

This section was amended three times in 1963, once by Ch. 36, once by Ch. 55, and once by Ch. 148. None of the amendments mentioned nor included any of the changes made by the others. However, since the changes do not appear to conflict, except possibly as noted herein, the compiler has made a composite section incorporating the changes made by all three amendatory acts. In so doing, the compiler has inserted the bracketed words in subd. (9) to indicate that the language added there by Ch. 55, Laws 1963, may have been amended by implication by Ch. 148, Laws 1963.

This section was amended twice in 1965, once by Ch. 9 and once by Ch. 241. Chapter 9 set out only subsection (12) as amended and neither amendatory act mentioned nor incorporated the changes made by the other. Since the two amendatory acts do not appear to conflict, the compiler has made a composite section incorporating the changes made by both.

The title of Ch. 9, Laws 1965, read, "An act amending section 26-202.1 to allow certain residents to hunt game birds without a license." There may be some question as to whether this is broad enough to cover the amendment with respect to residents of the Montana training center at Boulder.

Amendments

The 1957 amendment by Ch. 16, in subdivision (2) added the words at the be-

ginning thereof "Except as herein provided" and also added the 2 paragraphs of subsection (a) of subdivision (2).

The 1957 amendment by Ch. 100, added subdivision (11) now subdivision (12).

The 1959 amendment added the words "antelope and elk" following the word "deer" wherever they appear in subd. (3) and the phrase "and in special areas" following the words "during a special season."

Chapter 36, Laws 1963, inserted the words "and that any child residing at the Montana Children's Center at Twin Bridges, will be entitled to fish without a license" and the words "or proof of residency at the Montana Children's Center" in subd. (11), now subd. (12); and added to subd. (11), now subd. (12), a sentence reading, "A written statement from the superintendent of the Montana children's center is proof of residency at that institution."

Chapter 55, Laws 1963, added the last sentence to subd. (8), now subd. (9).

Chapter 148, Laws 1963 substituted "any resident person of Montana" for "any holder of a Class A license" near the beginning of subdivision (2); reduced the fee specified in subdivision (2) from \$3.00 to \$2.00; substituted "game birds and bear" for "game animals" in two places in the latter part of the first paragraph of subdivision (2); inserted "regulations of" before "the commission" near the end of the first paragraph of subdivision (2); substituted "January 1, 1964" for "January 1, 1958" near the beginning of subdivision (2) (a); substituted "no hunting licenses" for "no big game hunting license" near the beginning of subdivision (2) (a); deleted from the first paragraph of subdivision (2) (a) a clause permitting the presentation of "evidence that he has held a hunting license issued by this state in a

prior year" as an alternative to presentation of a certificate of competency, and a proviso reading, "provided further that all resident persons under fifteen (15) years of age must present a certificate of competency even if he has held a hunting license in prior years"; made minor changes in phraseology in subdivision (2); inserted "and any one of the following: a Class A-3, A-4, A-5, B-2, or B-4 license" near the beginning of subdivision (3); inserted "as so licensed" after "special season" near the end of subdivision (3); inserted a new subdivision (4) and renumbered the succeeding subdivisions; substituted "bird and bear license" for "big game license" near the beginning of present subdivision (9); added to present subdivision (9) the line concerning antelope; substituted "Class A-1 license" for "Class A license" near the beginning of present subdivision (10); deleted the words "except beaver" which followed "trap furbearing animals" in present subdivision (10) and followed "trap any furbearing animal" in present subdivision (11); made a minor change in the reference in present subdivision (12) to section 26-202.3; and deleted "and hunt game birds" which followed "shall be entitled to fish" in the clause corresponding to the first sentence of present paragraph (12) (a).

Chapter 9, Laws of 1965, divided subd. (12) into lettered paragraphs; rearranged and made numerous minor changes in phraseology and punctuation throughout subd. (12); inserted "and hunt game birds without a Class A-1 license" at the end of the first sentence of paragraph (12) (a); and inserted "and the committed residents of the Montana training center at Boulder" in the first sentence of paragraph (12) (b).

Chapter 241, Laws of 1965, deleted "and bear" after "game birds" in two places in the first sentence of the first paragraph of subsection (2); added the second sentence to subsection (4); added "in the area or areas designated in the license, as determined by the commission" after "kill game animals" and made minor change in phraseology in subsection (7); deleted "and bear" after "bird" near the beginning of subsection (9); substituted "bird" for "big game" before "licenses" near the beginning of the second paragraph of subsection (9); and added the second sentence to subsection (9).

Repealing Clauses

Section 2 of Ch. 16, Laws 1957; Sec. 2 of Ch. 100, Laws 1957; Sec. 3 of Ch. 36, Laws 1959 and Sec. 2 of Ch. 55, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 241, Laws 1965 pro-

vided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

Temporary Provision for Antelope and Deer Licenses

Chapter 12 of Laws 1965 provided for special nonresident antelope and deer licenses. Said act, which is to expire December 31, 1965, reads as follows: "An act authorizing the state fish and game commission to issue special nonresident antelope and special nonresident deer licenses, fixing the fees, and powers and duties under such licenses; containing an expiration date.

"Section 1. The state fish and game commission may issue special nonresident antelope licenses and special nonresident deer licenses as provided for in subsection 15 of section 26-104, Revised Codes of Montana, 1947, as amended. Such special licenses will be valid only for the area designated in the license, and shall expire annually on the thirty-first (31st) day of December. In counties of the first congressional district as they exist on January 1, 1965, such special licenses shall be issued only in areas which are not open to the hunting of elk. In areas where ten (10) or more written complaints from persons in the area involved, relating to the issuance of special nonresident deer and antelope permits, have been received by the fish and game department, a hearing at the county seat nearest to the area concerned must be held by representatives of the fish and game department where public protests will be heard. Such written complaints must be received within thirty (30) days after first announcement of seasons by the fish and game commission on or before the first (1st) day of August. Notice of such hearing shall be published in at least four (4) issues of local newspapers and by radio stations in the area concerned at least thirty (30) days prior to the date of the hearing. The fee for a special nonresident deer license shall be twenty dollars (\$20.00) and the fee for a special nonresident antelope license shall be twenty dollars (\$20.00). Not more than one (1) special nonresident deer license, and one (1) special nonresident antelope license shall be issued in any one (1) year to a nonresident. The tagging of game carcasses, as required by law, shall apply to all persons who purchased the special nonresident licenses herein provided. There shall be attached to each special nonresident antelope or deer license a permit which will authorize the holder thereof to ship or transport out of the state one (1) carcass of an animal for which such license was issued.

"Section 2. This act shall remain in full force and effect until December 31, 1966."

26-202.2. Special licenses—tagging of carcasses of game animals. (1) Special licenses authorized to be issued under the general powers of the fish and game commission may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the application prior to the time of filing of application for a special license.

(2) Any person who has obtained a moose, mountain sheep, bison, or buffalo license shall not be eligible to apply for another such license for the next succeeding seven (7) years, if such person has killed or taken an animal of the species for which such special license was issued. Any person who has obtained a moose, mountain sheep, bison or buffalo license but did not kill or take an animal of the species for which such special license was issued, shall be eligible to apply for another such license in any succeeding year if he returns his unused special license to the fish and game commission before or at the time application is made. It is further provided that any person who has received a special license for elk or mountain goat shall not be eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the commission reapplication may be made by those valid license holders of the current year who may fall within these limitations. It is further provided that any person who has killed or taken a game animal, except a deer or antelope, during the current license year, shall not be permitted to receive a special license under this act to hunt or kill a second game animal of the same species.

(3). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963.

Amendment

The 1963 amendment reduced the waiting period specified in the first sentence of subsection (2) from ten to seven years; added the words "if such person has killed or taken an animal of the species for

which such special license was issued" to the first sentence of subsection (2); and inserted the second sentence of subsection (2).

Repealing Clause

Section 2 of Ch. 65, Laws 1963 repealed all acts and parts of acts in conflict therewith.

DECISIONS UNDER FORMER LAW

Seizure and Confiscation of Untagged Carcass

In a case which arose while section 26-205 (subsequently repealed) was in effect it was held that where plaintiff lawfully killed a deer but failed to fill out the tag attached to his hunting license and attach it to the carcass, the deer was not unlawfully possessed and the game warden was without authority to seize and confiscate the carcass when he arrested plain-

tiff for failure to attach the tax. *Shipman v. Todd*, 131 M 365, 310 P 2d 300.

Where plaintiff lawfully killed a deer but failed to fill out the tag attached to his hunting license and attach it to the carcass as required by section 26-205 (since repealed), the deer was not unlawfully possessed and the game warden was without authority to seize and confiscate the carcass when he arrested plaintiff for failure to attach the tag. *Shipman v. Todd*, 131 M 365, 310 P 2d 300.

26-202.3. Defining resident. That in determining a resident for the purpose of issuing resident fishing and hunting licenses, the following provisions shall apply:

(1) That members of the armed forces of the United States or members of the armed forces of foreign governments attached to the armed

forces of the United States, who are assigned to duty in Montana, and members of their immediate families, and after a period of thirty (30) days within Montana, upon presenting assignment orders emanating from the proper unit commander, shall be considered residents for the purpose of this act. The thirty (30) day residence requirement is waived in time of war.

(2) Any citizen of the United States of America who has continuously resided within the state of Montana for a period of six (6) months immediately prior to making application for said license, or who is a legal resident of the state, shall be eligible to receive a resident hunting or fishing license.

History: En. Sec. 3, Ch. 267, L. 1955; amd. Sec. 1, Ch. 106, L. 1959; amd. Sec. 1, Ch. 72, L. 1961; amd. Sec. 1, Ch. 28, L. 1963.

Amendments

The 1959 amendment in subd. (1) added the words "and their spouses" after "armed forces of the United States" and deleted the words "or regularly appointed officers and employees of the United States forest service, the United States fish and wildlife service, United States park service and the bureau of land management."

The 1961 amendment in subd. (1) inserted the words "or members of the armed forces of foreign governments at-

tached to the armed forces of the United States"; deleted the words "and their spouses"; and inserted the words "and members of their immediate families," in subd. (1).

The 1963 amendment substituted "or" for "and" before "who is a legal resident" in subd. (2); and deleted a subd. (3) which read: "Any person in possession of first citizenship papers only shall not be considered a resident citizen of Montana, but such a person may purchase nonresident licenses."

Repealing Clause

Section 2 of Ch. 106, Laws 1959 repealed all acts and parts of acts in conflict therewith.

26-202.5. Provision for nonresident bear license. The state fish and game commission may issue special licenses in the manner provided in subsection 15 of section 26-104, R. C. M., 1947, to nonresidents to hunt black or brown bear, including any color phase of black bear. Such special nonresident license shall be valid only for the area designated on the license and shall expire on the thirty-first (31st) day of August of each year. The fee for such special nonresident license shall be twenty dollars (\$20.00). There shall be a permit included with such special nonresident license, to authorize the holder thereof to ship, transport or remove out of state any bear or part thereof taken under authority of said license.

The fish and game commission is authorized to promulgate rules and regulations relative to tagging, possession or transportation of bear within or without the state.

History: En. Sec. 1, Ch. 239, L. 1965.

Title of Act

An act to provide for the issuance of twenty dollar (\$20.00) nonresident bear licenses by the Montana fish and game commission.

Effective Date

Section 2 of Ch. 239, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

26-215. (3691) Exemption from general provisions. (a) The provisions of the fish and game laws shall not apply to persons pursuing, hunting, capturing, shooting, killing, taking or trapping, or attempting to kill, take or trap predatory animals, prairie dogs, ground squirrels, jack-

rabbits, gophers, or English sparrows, crows, hawks, fish ducks, blue heron, snow owls, great grey owls, great horned owls, blackbirds, kingfishers, magpies, jays and eagles, which may be pursued, hunted, taken, killed, shot, trapped, possessed or transported at any time except as specifically set forth herein and enforced pursuant to section 26-324, R. C. M. 1947.

(b) It shall be illegal to hunt jackrabbits on private land with artificial light unless written permission of the landowner, lessee or agent is obtained.

(c) Minors under fifteen (15) years of age may fish for and take fish, during the open season without a license.

History: En. Sec. 11, Ch. 238, L. 1921; re-en. Sec. 3691, R. C. M. 1921; amd. Sec. 11, Ch. 59, L. 1927; amd. Sec. 3, Ch. 161, L. 1931; amd. Sec. 2, Ch. 148, L. 1963; amd. Sec. 1, Ch. 48, L. 1965.

Amendments

The 1963 amendment deleted the words "pursue, hunt, shoot, kill, take and capture game birds and" which preceded "fish for and take fish" in present subsection (c).

The 1965 amendment divided the former section into subsections (a) and (c); in-

serted a new subsection (b); substituted "the fish and game laws" near the beginning of subsection (a) for "the act"; and added at the end of subsection (a) the words "except as specifically set forth herein and enforced pursuant to section 26-324, R. C. M. 1947."

Effective Date

Section 2 of Ch. 48, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

26-222. Compensation—duties. License agents, except salaried deputy fish and game wardens (state fish and game wardens), shall receive for all services rendered the sum of fifteen cents (15¢) for each license issued. On or before the 10th day of each month each license agent shall submit to the state fish and game warden (director) all duplicates of each class of licenses sold during the preceding month and shall accompany such duplicate licenses with lawful remittance of all moneys received for the sale thereof, less a fee of fifteen cents (15¢) for each license sold. Each license agent shall keep his license account open to inspection at all reasonable hours by the state fish and game commission, the state fish and game warden (director), or his deputies (wardens), or the state examiner.

History: En. Sec. 3, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 31, L. 1959.

Amendment

The 1959 amendment increased compensation of license agents from "10¢" for each license issued to "15¢."

Repealing Clause

Section 2 of Ch. 31, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 31, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 25, 1959.

26-225. Reciprocal fishing privileges of licensees of bordering states—agreements authorized. Any person who is properly licensed to fish in a state which borders the state of Montana and who complies with Montana fish and game laws and regulations may fish in any part of a lake, reservoir, pond or body of water in Montana that lies within or partly within ten (10) miles of the boundaries of this state, when such water is declared to be open to fishing by the state fish and game commission, provided, how-

ever, that such bordering state grants the same or similar privileges in any such body or bodies of water or in all lakes, reservoirs, ponds or bodies of water similarly defined within its boundaries to holders of valid Montana fishing licenses, and provided further that such state enters into a reciprocal agreement with Montana setting forth terms as provided by this act. The state fish and game commission is authorized to enter into reciprocal agreements with corresponding state officials of adjoining states for purposes of providing such reciprocal fishing privileges upon any body or bodies of water as described above. Such agreements may include provisions by which each state shall honor the license of the other state only when there is affixed to such license a stamp purchased from the honoring state, the charge for such stamp being set by mutual agreement of the states.

<p>History: En. Sec. 1, Ch. 14, L. 1965.</p> <p>Title of Act</p> <p>An act to provide the state fish and game commission authority to enter into</p>	<p>reciprocity agreements with any neighboring state for the mutual licensing of fishermen on any part of lakes and reservoirs within or partly within ten (10) miles of state boundaries.</p>
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26-226. Devices and equipment used under reciprocal privilege. The state fish and game commission may, by regulation, authorize use of by properly licensed fishermen of both states, of fishing devices and equipment, unless otherwise prohibited by Montana law, in waters forming the subject of such agreements.

History: En. Sec. 2, Ch. 14, L. 1965.

26-227. Bodies of water covered by reciprocal privileges. It is the primary purpose of this section to provide a method whereby the fishing opportunities afforded upon any part of any body of water located within or partly within ten (10) miles of the boundaries of this state may be mutually enjoyed by the residents of Montana and the residents of such adjoining states and it is not intended to cover the waters of rivers or streams.

History: En. Sec. 3, Ch. 14, L. 1965.

26-228. Rules and regulations to implement reciprocal agreements—violations. The state fish and game commission is hereby authorized to establish rules and regulations for the purpose of implementing said agreements. Any person violating any orders or regulations promulgated by the state fish and game commission under this act shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished as provided in section 26-324, R. C. M. 1947.

<p>History: En. Sec. 4, Ch. 14, L. 1965.</p> <p>Effective Date</p> <p>Section 5 of Ch. 14, Laws 1965 pro-</p>	<p>vided the act should be in effect from and after its passage and approval. Approved February 12, 1965.</p>
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CHAPTER 3—RESTRICTIONS ON TAKING FISH AND GAME—
OPEN AND CLOSED SEASONS

- Section 26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.
- 26-302. Big game hunters to wear colored garments.

- 26-303.1. Big game hunting by nonresidents—policy of state.
 26-303.2. Resident to accompany nonresident hunting big game—exception.
 26-303.3. Permission of landowner or lessee required for big game hunting.
 26-303.4. Big game hunting violations.
 26-307. Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions for bear.
 26-321. Closed and open season for furbearing animals.
 26-332. Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish.

26-301. (3694) Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto. 1 to 7. * * *
 [Same as parent volume.]

8. Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R. C. M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd.

Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963.

Amendment

The 1963 amendment deleted a former paragraph 8, for text of which see parent volume; and redesignated former paragraph 9 as 8.

26-302. Big game hunters to wear colored garments. It shall be unlawful for any person to hunt any of the big game animals in this state under any of the provisions of the laws of this state without such person wearing as an exterior garment, a cap or hat, shirt jacket, coat or sweater of a bright red, orange or yellow color.

History: En. Sec. 1, Ch. 74, L. 1937; amd. Sec. 1, Ch. 12, L. 1961.

Amendment

The 1961 amendment inserted the words "as an exterior garment" and the words "orange or yellow" near the end of the section.

Repealing Clause

Section 2 of Ch. 12, Laws 1961 repealed all acts and parts of acts in conflict therewith.

26-303.1. Big game hunting by nonresidents—policy of state. It shall be the policy of this state to protect and preserve game animals primarily for the citizens of this state and to avoid the deliberate waste of wildlife and destruction of property by nonresidents licensed to hunt in this state.

History: En. Sec. 1, Ch. 229, L. 1965.

Title of Act

An act to preserve game animals and

protect private property by requiring that nonresident hunters be accompanied by a licensed resident, and making any violation a misdemeanor.

26-303.2. Resident to accompany nonresident hunting big game—exception. It shall be unlawful for any nonresident to hunt big game animals in this state unless he is accompanied by a resident licensed to hunt game

animals, provided that a nonresident need not be accompanied when hunting in special deer or antelope areas as designated by the state fish and game commission.

History: En. Sec. 2, Ch. 229, L. 1965.

26-303.3. Permission of landowner or lessee required for big game hunting. Every resident and nonresident must have obtained permission of the landowner, lessee or their agents before hunting big game animals on private property.

History: En. Sec. 3, Ch. 229, L. 1965.

26-303.4. Big game hunting violations. Any person violating any provision of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 26-324.

History: En. Sec. 4, Ch. 229, L. 1965.

26-307. (3696) Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions for bear.

(1) It shall be unlawful and a misdemeanor for any person responsible for the death of any game animal of this state, excepting grizzly, black and brown bear, to detach or remove from the carcass only the head, hide, antlers, tusks or teeth, or any or all of aforesaid parts, or to waste any part of any game animal, game bird, or game fish suitable for food, or to abandon the carcass of any game animal in the field, except grizzly, black and brown bear, which need have removed and taken from the carcass only the head or the hide of such bear.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R. C. M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961.

Amendment

The 1961 amendment inserted references to black and brown bear in two places in subd. (1) and added at the end of subd. (1) the words, "which need have removed and taken from the carcass only the head or the hide of such bear."

26-321. (3704) Closed and open season for furbearing animals. It shall hereafter be unlawful and a misdemeanor for any person to shoot, trap, kill, or capture, or cause to be shot, trapped, killed, or captured, or attempt to shoot, trap, kill, or capture any marten or sable, otter, mink, muskrat, beaver, fisher, Canada lynx or black-footed ferret until such time as the commission shall provide an open season on any marten or sable, otter, mink, muskrat, beaver, fisher, Canada lynx or black-footed ferret; provided, however, that when it is shown that muskrats or beaver are doing severe injury upon, or are a menace to the structures, canal banks or other works of an irrigation project or district, or stock water pond, any employee or resident landowner on such project or district may kill or trap or cause to be killed or trapped any muskrat or beaver upon or in menacing proximity to the structures, canal banks or other works of such project or district or stock water pond during the closed season on muskrats or beaver, after having secured from the state fish and game director a permit so to do, except that from June first to August thirty-first, both dates

inclusive, of each year, no such permit shall be required. The furs and hides of such animals, legally taken during the open season, may be possessed, bought and sold at any time except as hereinafter provided.

Any person trapping marten during the open season thereon shall present all skins or pelts of marten so taken to the game warden residing in the district where the pelts were taken, and shall furnish an affidavit, giving his name, residence, license number, the date and place of capture, and the number of marten so taken, and if the warden is satisfied of the legal taking of the same, he shall attach a numbered metal tag to each skin covered by the affidavit; no charge shall be made for tags and the pelts so tagged may be bought, sold or transported at any time within the state of Montana, but no marten skin shall be exported in any manner from the state without the shipper first obtaining a shipping permit from the state fish and game director, or game warden, the application for which shall show the number on the metal tags attached to said marten skins.

Any person who shall receive or bring into from without the state any marten skin or skins with a numbered metal tag of another state or untagged marten skins coming from without the state where the state in which the marten skins were caught does not require that metal tags be attached before shipment, shall report their arrival within ten (10) days to the state fish and game director and furnish an affidavit setting forth the number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and the numbers designated from the tags, and the name of the state so tagging the same, and it shall not be necessary for such skins to be retagged with a Montana tag nor any other fees paid therefor.

It shall be a misdemeanor, punishable as hereinafter provided, for any person to remove any tag from such skins or to buy, sell or transport untagged marten skins, except as provided in this act, or fail to have tags attached to marten skins as herein provided within twenty (20) days of the expiration date of the open season thereon.

It shall be unlawful and punishable, as in this act hereinafter provided, for any person at any time to wilfully destroy, open or leave open, or partially destroy a house of any muskrat or beaver except that this shall not prohibit trapping in the house of muskrats when the commission shall authorize such trapping.

Any person trapping furbearing animals or predatory animals for their pelts shall fasten a metal tag to all such traps bearing in legible English the name and address of the trapper, except that no tag shall be required on traps used by landowners trapping with permit on their own land, and irrigation ditch right-of-way contiguous to the land.

Any person violating any of the provisions hereof shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

History: En. Sec. 21, Ch. 238, L. 1921; amd. Sec. 1, Ch. 95, L. 1943; amd. Sec. 8, re-en. Sec. 3704, R. C. M. 1921; amd. Sec. Ch. 224, L. 1947; amd. Sec. 1, Ch. 132, L. 14, Ch. 77, L. 1923; amd. Sec. 22, Ch. 192, 1955; amd. Sec. 1, Ch. 69, L. 1961.
L. 1925; amd. Sec. 17, Ch. 59, L. 1927;

Amendment

The 1961 amendment deleted the word "fox" both times it appeared in the first paragraph between the words "otter"

and "mink" and inserted the words "Canada lynx or black-footed ferret" after "fisher" both times they appear in the first paragraph.

26-324. (3706) Penalty.**Operation and Effect**

Where plaintiff lawfully killed a deer but failed to fill out the tag attached to his hunting license and attach it to the carcass, the deer was not unlawfully pos-

sessed and the game warden was without authority to seize and confiscate the carcass when he arrested plaintiff for failure to attach the tag. *Shipman v. Todd*, 131 M 365, 310 P 2d 300.

26-332. (3714) Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish. Every person who takes or catches fish in any of the waters of this state except with hook and line held in hand or line and hook attached to rod or pole held in hand, or who takes or catches fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries, or who takes or catches fish by means of the use of fish traps, grab hooks, seines, nets, or other similar means for catching fish, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in section 26-324, and the amendments thereto; provided, however, that the Montana fish and game commission shall have the power, authority, and jurisdiction, to designate such waters within the state of Montana, wherein, in the judgment of the members of said commission, traps, seines, or nets, and rubber or spring propelled spears when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of nongame fish and to close such waters so designated at the discretion of the commission, and to permit the taking of black bass in Flathead Lake, the taking of all fish by said means in said waters when so designated to be done under such rules and regulations as said commission may prescribe with reference thereto, and under the supervision of said commission, and all such fish so taken may be possessed and sold in such manner and under such restrictions as said commission may direct, all fish other than those herein designated so taken under said rules and regulations when prescribed by said commission, shall be returned uninjured to the waters from which they were taken.

History: En. Sec. 22, Ch. 173, L. 1917; re-en. Sec. 3714, R. C. M. 1921; amd. Sec. 16, Sec. 77, L. 1923; amd. Sec. 25, Ch. 192, L. 1925; amd. Sec. 18, Ch. 59, L. 1927; amd. Sec. 1, Ch. 44, L. 1959.

Amendment

The 1959 amendment added the phrase "and rubber or spring propelled spears when employed by sportsmen swimming or submerged in the water" following the words "or nets," in the proviso; added the words "designated species of" preced-

ing the words "nongame fish," and deleted the phrase "and Dolly Varden trout."

Repealing Clause

Section 2 of Ch. 44, L. 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 44, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved February 26, 1959.

CHAPTER 4—BEAVER—TRAPPING—LICENSE—PROTECTION

Section 26-401. Protection of beaver—permits and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation.

26-401. (3722) Protection of beaver—permits and fee—tagging, importing and exporting of skins—expiration of permit—penalty for violation. No person shall take, trap, shoot, kill, capture or attempt to take, trap, shoot, kill or capture, or in any way destroy any beaver in the state of Montana, or possess, buy, sell, ship or transport within or without the state, or cause the same to be done, any beaver or any part thereof including skins or hides and castors whether taken within or coming from without the state, except as hereinafter permitted.

Whenever beaver have increased in number to such an extent that in the judgment of the state fish and game commission the number of such beaver should be reduced, the commission shall have the authority to declare an open season on beaver under such rules and regulations as it shall prescribe; provided, however, that nothing herein contained shall authorize trapping on privately owned or leased lands, except with the approval of the landowner or lessee, or as hereinafter provided.

The state fish and game director may issue a permit to any bona fide owner or lessee of real estate which is being actually and materially damaged by beaver, to trap beaver on his own or leased premises only, and provided that the director shall, when issuing the permit mentioned, designate therein the maximum number of beaver that may be trapped under such permit. The fee for such permit shall be five dollars (\$5.00). All applications for beaver permits shall be filed with the state fish and game director, between the dates of May first and September thirtieth of each year. The term "premises" shall be construed to include any irrigation ditch or right of way appurtenant to the land for which said license or permit is issued.

That the state fish and game director shall in person or, by warden, examine the premises and investigate the alleged damage by beaver before issuing a license or permit.

Any person trapping beaver under a license or permit of the state fish and game director shall properly care for all skins of beaver taken thereunder and as soon as cured shall send to the state fish and game warden residing in this county, or in event of such warden being absent or unable to act, then to the nearest warden from the place of the trapper's residence, and send to such officer an affidavit giving his name, residence, license or permit number, the date and place of capture, with the number so captured, together with fifty cents (50¢) for each skin, and if such officer is satisfied of the legal taking of the same, he shall thereupon immediately forward such affidavit with the money, and a report, to the state fish and game director; and upon the receipt thereof the state fish and game director shall forward to such warden numbered metal tags sufficient in number for one to be attached to each skin covered by the affidavit; upon receipt of such tags the warden shall so attach them to the skins.

Any person who shall receive or bring into from without the state any beaver skin or skins duly tagged with a distinctive numbered metal tag of another state, shall report their arrival within ten (10) days to the state fish and game director and furnish an affidavit setting forth the

number of skins, the date of receipt, the name and address of the person from whom procured, the manner or method of transportation into the state, and the numbers designated on the tags, and the name of the state so tagging the same, and the same shall be accompanied by a fee of fifty cents (50¢), and it shall not be necessary for such skins to be re-tagged with a Montana tag, nor any other fees paid therefor.

The state fish and game director shall keep a record of all skins so reported.

Each metal tag shall remain attached to the beaver skin to which it was originally affixed until it is dressed and manufactured into an article of commerce, or it shall accompany any skin shipped or transported out of the state. It shall be a misdemeanor, punishable as hereinafter provided, to remove a tag from such skins, to duplicate or reproduce such tags for fraudulent purposes or use contrary to the provisions of this act, or to misuse any tag detached from the skin to which it was originally attached.

Beaver skins taken within the state under permit, and those coming from without the state, tagged as herein provided may be possessed, bought, sold or transported at any time within the state of Montana, but no beaver skin or skins may be exported in any manner from the state without the shipper first obtaining an export or shipping permit from the state fish and game director, which may be issued upon application showing the kind and number of the metal tags on said skins and the payment of a fee of sixty cents (60¢) for the permit for each shipment.

Any package offered for transportation from the state which contains a beaver skin or skins shall be clearly marked on the outside thereof with the names and addresses of the consignor and consignee, the number and kind of skins contained therein, and the number of the shipping permit.

Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished as provided by section 26-324. Any beaver skin or skins taken or found in this state or which have been shipped out of this state except as specifically permitted by this section are being hereby declared contraband and shall be seized by the state fish and game director, warden or other officer authorized to enforce the provisions of this act. All skins so seized shall be marked or tagged for identification and sold by the state fish and game director at public auction in the state of Montana, after advertising at least fifteen (15) days prior to the date of sale, and the proceeds therefrom turned into the state treasury to be credited to the fish and game fund.

Beaver trapping permits issued under the provisions of this act shall expire June first of each year and all beaver skins taken thereunder and not reported and tagged according to the provisions of this section prior to July first following, shall be subject to seizure and sale as herein provided.

History: En. Sec. 38, Ch. 173, L. 1917; amd. Sec. 1, Ch. 167, L. 1935; amd. Sec. 1, Ch. 197, L. 1919; re-en. Sec. 15, Ch. 224, L. 1947; amd. Sec. 1, Ch. 3722, R. C. M. 1921; amd. Sec. 17, Ch. 77, 153, L. 1953; amd. Sec. 1, Ch. 24, L. 1957. L. 1923; amd. Sec. 19, Ch. 59, L. 1927;

Amendment

The 1957 amendment in the third paragraph decreased the permit fee from \$10 to \$5; deleted the words "for ten (10) or less number of beaver and one dollar (\$1.00) per beaver for any number in excess of ten (10)" which appeared immediately after "five dollars (\$5.00)"; deleted from the end of the fifth paragraph the words "and shall receive from the owner ten cents (10c) for each skin so tagged by him, the same to be for his

services"; deleted a former 6th paragraph which read "A record of tags so issued shall be kept in the office of the state fish and game warden" and in the last paragraph substituted "June" for "May" and "July" for "June."

Repealing Clause

Section 2 of Ch. 24, Laws 1957 repealed all acts and parts of acts in conflict therewith.

CHAPTER 5—PROTECTION OF CERTAIN WILD BIRDS—SALE OF CONFISCATED BIRDS AND ANIMALS

Section 26-510. Special wild turkey tags—fee.

26-511. Tagging of turkey.

26-512. Penalty for violation.

26-503. (3725) Possession of unlawfully killed animals, etc.

Operation and Effect

Section 26-110 has reference only to what the legislature denounced as unlawful possession under this section, and for

which the accused could be prosecuted for unlawful possession. *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 302.

26-506. (3726) Sale of confiscated birds and animals.

References

Cited or applied in *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 303 (dissenting opinion).

26-508. (3728) Disposition of proceeds of sale.

Liability of Game Warden for Seizure of Carcass

This section has reference only to a case wherein the officer has a right to seize the property, and it offered no defense to

a game warden who confiscated the carcass of a deer which was properly killed in open territory by one with a license. *Shipman v. Todd*, 131 M 365, 310 P 2d 300, 302.

26-510. Special wild turkey tags—fee. The state fish and game commission may issue wild turkey tags to the holder of a valid Class A-1, Class B-1, or Class B-2 license. Each tag shall authorize the holder to hunt, shoot, capture or possess one (1) wild turkey during such times and such places as the commission shall authorize an open season on wild turkey.

The fee for a wild turkey tag shall be two dollars (\$2.00). Turkey tags shall be issued either by a drawing system, or in unlimited number according to such rules and regulations as the commission shall prescribe.

History: En. Sec. 1, Ch. 35, L. 1959; amd. Sec. 3, Ch. 148, L. 1963.

for penalties; and repealing all acts and parts of acts in conflict herewith.

Title of Act

An act providing that the state fish and game commission may issue wild turkey tags to holders of valid Class A, Class B-1, Class B-2 licenses; providing for a two dollar (\$2.00) fee; providing for the tagging of said turkeys; providing

Amendment

The 1963 amendment substituted "Class A-1" for "Class A" in the first sentence.

Effective Date

Section 4 of Ch. 148, Laws 1963 read "This act shall be effective May 1, 1964."

26-511. Tagging of turkey. Every person who shall take or kill any turkey shall immediately thereafter attach to the leg of said turkey the proper tag which has been validated by the holder thereof by complying with instructions on said tag.

History: En. Sec. 2, Ch. 35, L. 1959.

26-512. Penalty for violation. Any person who shall kill, capture or possess any wild turkey by authority of any turkey tag or permit and shall fail or neglect to attach his tag to the turkey, or shall fail to validate his tag by filling out or punch marking the tag as required and to keep the tag attached while the same is possessed by him, shall be guilty of a misdemeanor and upon conviction shall be punished as provided for in section 26-324 of the Revised Codes of Montana, 1947, as amended.

History: En. Sec. 3, Ch. 35, L. 1959.

Repealing Clause

Section 4 of Ch. 35, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 7—SHIPMENT OF ANIMALS FROM STATE

Section 26-701. Removal of animals or parts of animals from the state unlawful, when illegally taken.

26-708. Commercial exportation of aquatic insects prohibited.

26-701. (3730) Removal of animals or parts of animals from the state unlawful, when illegally taken. It is hereby declared to be unlawful and a misdemeanor, punishable as provided by section 26-324, for any person or persons, to possess, ship or take out of the state any illegally taken game and non-game birds, fish, game animals, furbearing animals or the skins of furbearing animals, or any parts thereof, whether taken within or coming from without the state.

History: En. Sec. 51, Ch. 173, L. 1917; re-en. Sec. 3730, R. C. M. 1921; amd. Sec. 19, Ch. 77, L. 1923; amd. Sec. 22, Ch. 59, L. 1927; amd. Sec. 19, Ch. 224, L. 1947; amd. Sec. 1, Ch. 38, L. 1963.

Amendment

The 1963 amendment inserted "possess" before "ship or take out"; substituted "any illegally taken" for "any of the" after "take out of the state"; deleted the words "which are mentioned in this act" after "or any parts thereof"; and deleted from

the end of the section the words "except the same be done in the manner provided for by sections 26-701, 26-702 and 26-703."

Repealing Clause

Section 2 of Ch. 38, Laws 1963 read "Sections 26-702, 26-703, and 26-707, Revised Codes of Montana, 1947, are repealed."

Effective Date

Section 3 of Ch. 38, Laws 1963 read "This act is effective May 1, 1963."

26-702, 26-703. (3731, 3732) Repealed.

Repeal

These sections (Secs. 52, 53, Ch. 173, L. 1917; Secs. 20, 21, Ch. 77, L. 1923; Secs. 23, 24, Ch. 59, L. 1927; Sec. 1, Ch. 226, L. 1943; Sec. 1, Ch. 102, L. 1945;

Sec. 1, Ch. 182, L. 1947; Sec. 1, Ch. 116, L. 1955), relating to permits for removal from the state of game animals, birds, and fish, were repealed by Sec. 2, Ch. 38, Laws 1963.

26-707. (3736) Repealed.

Repeal

This section (Sec. 57, Ch. 173, L. 1917; Sec. 27, Ch. 59, L. 1927; Sec. 1, Ch. 171,

L. 1943), relating to the fee for shipping permits, was repealed by Sec. 2, Ch. 38, Laws 1963.

26-708. Commercial exportation of aquatic insects prohibited. It is hereby declared to be unlawful and a misdemeanor, punished as provided by section 26-324, R. C. M. 1947, for any person or persons, to ship or take out of the state any aquatic insects for speculative purposes, for market or for sale. This section shall not apply to aquatic insects caught in private ponds by the owners thereof.

History: En. Sec. 1, Ch. 13, L. 1965.

take out of the state any aquatic insects for speculative purposes, for market or for sale.

Title of Act

An act declaring it unlawful to ship or

CHAPTER 8—MISCELLANEOUS PROHIBITIONS

Section 26-811. Contests based on size of game animals unlawful.

26-811. Contests based on size of game animals unlawful. Except as provided in this section, it is unlawful for any person, as defined in section 26-201, Revised Codes of Montana, 1947, to conduct or sponsor in any manner a contest in which a prize is offered to a person who kills a game animal possessing the largest antlers or horns, carrying the greatest weight, having the longest body, or any similar contest based upon the size or weight of a game animal or part of a game animal. This act does not apply to recognition given by the nationally established and recognized Boone and Crockett trophy institute. A person who violates this section is guilty of a misdemeanor and is punishable according to the provisions of section 26-324, Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 133, L. 1961.

lawing contests which are based upon the size or weight of a game animal or part of a game animal; providing a penalty.

Title of Act

An act relating to game animals; out-

CHAPTER 9—OUTFITTER'S LICENSE—TAXIDERMIST'S LICENSE

Section 26-907. Taxidermist's license—fee—penalty for violations.

26-907. (3751) Taxidermist's license — fee — penalty for violations. Any person who shall engage in, or who is at the present time engaged in conducting any taxidermist business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving or preparing any of the dead bodies of any birds, or animals, or any part thereof, mentioned in the game laws of this state, must first obtain from the state fish and game director a taxidermist's license and shall pay an annual license fee of fifteen dollars (\$15.00) therefor. Such person shall, keep a written record of all the articles of game, the kind and number of each, by whom owned, license number, and the residence of owner, also of all the articles of game shipped, and to whom and where shipped. The above record shall be kept for at least a period of one (1) year and open to inspection by any state game warden at any reasonable time. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by section 26-324. In all cases of conviction of violation of this act the license of the person convicted shall be revoked.

History: En. Sec. 72, Ch. 173, L. 1917; re-en. Sec. 3751, R. C. M. 1921; amd. Sec. 24, Ch. 77, L. 1923; amd. Sec. 26, Ch. 224, L. 1947; amd. Sec. 1, Ch. 12, L. 1959.

Amendment

The 1959 amendment substituted the second and third sentences for one which read "Such person shall, on the first day of each month, make a written report to the state fish and game director, of all the articles of game, the kind and number of each, by whom owned, and the resi-

dence of owner, received during the past month, also of all the articles of game shipped, and to whom and where shipped, during the last month; also the amount and kind of each on hand on the last day of the month, and by whom owned and owners address."

Repealing Clause

Section 2 of Ch. 12, Laws 1959 repealed all acts and parts of acts in conflict therewith.

CHAPTER 11—GAME PRESERVES, MIGRATORY BIRD RESERVATIONS

26-1103. (3764) Repealed.

Repeal

This section (Sec. 1, Ch. 87, L. 1911; amd. Sec. 1, Ch. 124, L. 1915; re-en. Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 138,

L. 1919; amd. Sec. 1, Ch. 80, L. 1925; amd. Sec. 29, Ch. 224, L. 1947), relating to the Gallatin preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1104. (3765) Repealed.

Repeal

This section (Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 75, L. 1933), relating to

the Snowy Mountain preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1106. (3767) Repealed.

Repeal

This section (Sec. 83, Ch. 173, L. 1917; amd. Sec. 1, Ch. 3, L. 1949), relating to

the Powder river game preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1110. (3769) Repealed.

Repeal

This section (Sec. 83, Ch. 173, L. 1917; amd. Sec. 30, Ch. 224, L. 1947), relating

to the Twin Buttes game preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1112. (3771) Repealed.

Repeal

This section (Sec. 1, Ch. 109, L. 1917; re-en. Sec. 83, Ch. 173, L. 1917), relating

to the South Moccasin mountain game preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

26-1114. (3773) Repealed.

Repeal

This section (Sec. 1, Ch. 114, L. 1921; amd. Sec. 31, Ch. 224, L. 1947), relating to

the Blackleaf game and bird preserve, was repealed by Sec. 1, Ch. 54, Laws 1957.

CHAPTER 15—CONSTRUCTION AND HYDRAULIC PROJECTS AFFECTING FISH AND GAME

- Section 26-1501. Policy of state.
 26-1502. Notice of projects to be given fish and game commission—contents of notice.
 26-1503. Investigation of construction plans—technical insufficiency—aid in planning.
 26-1504. Notice of commission findings—recommendations and alternative plans.
 26-1505. Refusal by applicant to modify plans—arbitration of disputes.
 26-1506. Vested water rights preserved—emergency actions.
 26-1507. Irrigation projects exempt.

26-1501. Policy of state. It is hereby declared to be the policy of the state of Montana that its fish and wildlife resources and particularly the fishing waters within the state are to be protected and preserved to the end that they be available for all time, without change, in their natural existing state except as may be necessary and appropriate after due consideration of all factors involved.

History: En. Sec. 1, Ch. 10, L. 1965.

Compiler's Note

Chapter 258, Laws of 1963, was similar to this chapter but was temporary in nature and expired June 30, 1965.

Title of Act

An act to establish the policy of the

state of Montana on protection of fishing streams; providing for submission of plans for construction and hydraulic projects affecting such streams to the Montana fish and game commission and for review of such plans; and providing for arbitration of disagreements between the fish and game commission and the agency proposing such projects.

26-1502. Notice of projects to be given fish and game commission—contents of notice. An agency of state government, county, municipality, or other subdivision of the state of Montana, hereafter called applicant, shall not construct, modify, operate, maintain, or fail to maintain, any construction project or hydraulic project which may or will obstruct, damage, diminish, destroy, change, modify, or vary the natural existing shape and form of any stream or its banks or tributaries by any type or form of construction without first causing notice of such planned construction to be served upon the Montana fish and game commission, on forms furnished by the fish and game commission as soon as preliminary plans are completed, but not less than sixty (60) days prior to commencement of final plans for construction. Such notice shall include detailed plans and specifications of so much of said project as may or will affect in any manner specified above any such stream.

History: En. Sec. 2, Ch. 10, L. 1965.

26-1503. Investigation of construction plans—technical insufficiency—aid in planning. The commission shall promptly examine and investigate all such plans. Should the commission determine the plans and specifications furnished with any such application technically insufficient the commission shall so notify the applicant, and may render aid in preparing adequate plans and specifications.

History: En. Sec. 3, Ch. 10, L. 1965.

26-1504. Notice of commission findings—recommendations and alternative plans. Within thirty (30) days after the receipt of such plans, the commission shall notify the applicant whether or not such construction project or hydraulic project will adversely affect any fish or game habitat. If the fish and game commission notifies the applicant that such construction will adversely affect any fish or game habitat, it shall accompany such notice with recommendations or alternative plans which will eliminate or diminish such adverse effect.

History: En. Sec. 4, Ch. 10, L. 1965.

26-1505. Refusal by applicant to modify plans—arbitration of disputes. (1) If the fish and game commission notifies the applicant that the con-

struction will adversely affect fish or game habitat, the applicant, within fifteen (15) days after receiving the recommendations and alternatives of the fish and game commission, shall notify the fish and game commission if it refuses to modify its plans in accordance with such recommendations or alternatives. In the event of such refusal, the disagreement shall be arbitrated as provided in subsection (2) of this section.

(2) Upon receipt of such notice of refusal, the fish and game commission shall determine if it wants the disagreement arbitrated. Within ten (10) days after an affirmative determination, and after notice to the other agency or agencies involved, the fish and game commission shall notify, in writing, all district judges of the judicial district or districts in which the project is located that an arbitration board is needed. Within five (5) days of receipt of notification, such judges shall appoint three (3) people from the county or counties in which the project is located to an arbitration committee. Within ten (10) days after the committee is appointed, it shall meet, hear testimony from all the agencies concerned, and issue a decision signed by at least two (2) members of the committee. The decision shall be binding on all parties concerned. The actual and necessary expenses of the arbitrators shall be divided equally among the agencies involved.

History: En. Sec. 5, Ch. 10, L. 1965.

26-1506. Vested water rights preserved—emergency actions. This act shall not operate or be so construed as to impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States, or in emergencies such as floods, ice jams or other conditions causing emergency handling.

History: En. Sec. 6, Ch. 10, L. 1965.

26-1507. Irrigation projects exempt. This act shall not apply to any state water conservation board irrigation project presently operating, or that may be constructed in the future or to any irrigation district project or any other irrigation project.

History: En. Sec. 7, Ch. 10, L. 1965.

CHAPTER 16—SHOOTING PRESERVES

Section 26-1601.	Licenses and permits authorized—rules and regulations.
26-1602.	Size and location of preserves—posting of boundaries.
26-1603.	Game hunted in preserve—stocking of game required.
26-1604.	Fees for licenses or permits.
26-1605.	Amount of game recoverable under license or permit.
26-1606.	Shooting restrictions established by preserve operators.
26-1607.	Duration of season on preserve.
26-1608.	Tagging of game taken from preserve.
26-1609.	Registration of shooters—records maintained by operator.
26-1610.	Hunting of wild game on preserve.
26-1611.	Bird license required to hunt on preserve.
26-1612.	Commercial and membership licenses and permits—list maintained by commission.
26-1613.	Revocation of license or permit—reissuance.
26-1614.	Unscheduled inspections by commission.

26-1601. Licenses and permits authorized—rules and regulations. That the Montana fish and game commission is hereby authorized and empowered to issue operating licenses or permits for shooting preserves, which may be privately owned and operated, and to make such rules and regulations as may be necessary and proper in carrying out the purposes of this act.

History: En. Sec. 1, Ch. 265, L. 1965.

Title of Act

A bill to authorize the issuance of operating licenses or permits for privately owned and operated shooting preserves by the Montana fish and game commission and fixing fees for such license or permit; providing for the release of artificially

propagated game and the taking of the same on privately owned and operated shooting preserves; providing for the fixing of shooting seasons on the same; providing for the maintenance of records by operators thereof; providing for the revocation of licenses or permits for privately owned and operated shooting preserves; and providing a repealing clause.

26-1602. Size and location of preserves—posting of boundaries. Operating licenses or permits may be issued to any person, partnership, association or corporation for the operation of shooting preserves that meet the requirements hereinafter prescribed.

(a) each shooting preserve shall be restricted to not more than 1,280 contiguous acres and shall not be located closer than ten (10) miles from another preserve and in areas which will not substantially reduce hunting areas available to the public as determined by the commission.

(b) the exterior boundaries of each shooting preserve shall be clearly defined and posted with signs erected around the extremity at intervals of 250 feet or less.

History: En. Sec. 2, Ch. 265, L. 1965.

26-1603. Game hunted in preserve—stocking of game required. Game which may be hunted under this act shall be confined to artificially propagated pheasants, quail, chukar partridges, turkeys and such other species as the Montana fish and game commission may add from time to time.

A minimum number of stock of each species to be hunted on a shooting preserve shall be released on the licensed area during the shooting preserve season. The minimum number of stock of each species to be released shall be determined by the Montana fish and game commission before the commencement of the said season.

History: En. Sec. 3, Ch. 265, L. 1965.

26-1604. Fees for licenses or permits. Fees for shooting preserve licenses or permits shall be fifty dollars (\$50) per year for the first 160 acres of shooting preserve area, plus twenty dollars (\$20) per year for each additional 160 acres or parts thereof.

History: En. Sec. 4, Ch. 265, L. 1965.

26-1605. Amount of game recoverable under license or permit. The operating licenses or permits issued by the Montana fish and game commission shall entitle holders thereof, and their members, guests or patrons to recover not more than 80% of the total number of each species of game released on the premises each year.

History: En. Sec. 5, Ch. 265, L. 1965.

26-1606. Shooting restrictions established by preserve operators. Except for required compliance with the game recovery restriction provided in section 5 [26-1605] above, shooting preserve operators may establish their own shooting limitations and restrictions on the age, sex and number of each species that may be taken by each person.

History: En. Sec. 6, Ch. 265, L. 1965.

26-1607. Duration of season on preserve. In order to give a reasonable opportunity for a fair return on a sizeable investment, the season established for shooting preserves shall be no less than one hundred twenty (120) consecutive days as designated by the Montana fish and game commission during the four (4) month period beginning September 1 and ending December 31.

History: En. Sec. 7, Ch. 265, L. 1965.

26-1608. Tagging of game taken from preserve. All harvested game shall be tagged with a self-sealing tag prior to being either consumed on the premises or removed therefrom, such tags to remain affixed until the game actually is prepared for consumption. The Montana fish and game commission shall furnish tags at nominal cost to shooting preserve operators, the tags to be numbered consecutively and dated by year of issuance.

History: En. Sec. 8, Ch. 265, L. 1965.

26-1609. Registration of shooters—records maintained by operator. Each shooting preserve operator shall maintain a registration book listing the names, addresses and hunting license numbers of all shooters; the date on which they hunted; the amount of game and the species taken; and the tag numbers affixed to each carcass. An accurate record likewise must be maintained of the total number, by species, of game raised and/or purchased, and the date and number of all species released. These records shall be open to inspection by a delegated representative of the Montana fish and game commission at any reasonable time, and shall be the basis upon which the game-recovery limits in section 5 [26-1605] hereof shall be determined.

History: En. Sec. 9, Ch. 265, L. 1965.

26-1610. Hunting of wild game on preserve. Any wild game found on shooting preserves may be harvested in accordance with applicable game and hunting laws pertaining to open seasons, bag and possession limits, and so forth, as are established regularly by the Montana fish and game commission and the U. S. fish and wildlife service.

History: En. Sec. 10, Ch. 265, L. 1965.

26-1611. Bird license required to hunt on preserve. All persons hunting on shooting preserves must have a valid resident or nonresident game bird license.

History: En. Sec. 11, Ch. 265, L. 1965.

26-1612. Commercial and membership licenses and permits—list maintained by commission. Each shooting preserve license or permit issued by the Montana fish and game commission shall designate whether or not the

preserve is open to the public on a commercial basis, or is restricted to a membership or other limited group. In the latter case, the license or permit shall specify that the area is a restricted shooting preserve. The Montana fish and game commission shall maintain accurate listings of the names, addresses, and the location of the property, of all persons to whom shooting preserve licenses or permits are issued; said lists shall be made available in their entirety to anyone requesting same, and shall specify whether the preserves are public or private.

History: En. Sec. 12, Ch. 265, L. 1965.

26-1613. Revocation of license or permit—reissuance. The Montana fish and game commission may revoke any shooting preserve license or permit issued under the authority of this act, when the licensee has violated any of the provisions of this act or any rule or regulation of the state fish and game commission. After such revocation, a new license or permit may be issued, if in the discretion of the Montana fish and game commission the circumstances so warrant.

History: En. Sec. 13, Ch. 265, L. 1965.

26-1614. Unscheduled inspections by commission. The state fish and game commission shall conduct unscheduled inspections of all shooting preserves licensed under this act to insure that pertinent statutes as well as the rules and regulations of the state fish and game commission are being followed and obeyed.

History: En. Sec. 14, Ch. 265, L. 1965.

Repealing Clause

Section 15 of Ch. 265, Laws 1965 repealed all acts and parts of acts in conflict therewith.

TITLE 27—FOOD AND DRUGS

- Chapter 2. Regulation, management and sale of insecticides, fungicides, rodenticides, herbicides and other economic poisons, 27-203.
3. State board of food distributors—regulation of food stores and food stuffs, 27-310, 27-313.
4. Supervision of milk industry—state milk control board, 27-403 to 27-407, 27-409, 27-410, 27-414, 27-416, 27-417, 27-426 to 27-429.
6. Food service establishments, markets and manufacturers, 27-601 to 27-610.

CHAPTER 1—PURE FOOD AND DRUG ACT

27-111. (2589) Repealed.

Repeal

This section (Sec. 10, Ch. 130, L. 1911; Sec. 1, Ch. 175, L. 1921), relating to the licensing of restaurants and other food

establishments, was repealed by Sec. 12, Ch. 122, Laws 1965. For present law, see secs. 27-601 to 27-610.

CHAPTER 2—REGULATION, MANAGEMENT AND SALE OF INSECTICIDES, FUNGICIDES, RODENTICIDES, HERBICIDES AND OTHER ECONOMIC POISONS

Section 27-203. Prohibited acts.

27-203. Prohibited acts. (a) and (b). * * * [Same as parent volume.]

(c) One who manufactures or sells an "economic poison" thereby warrants to any buyer or any ultimate user that the product is free from any latent defect arising from the process of manufacture, and also that neither the manufacturer nor seller nor their agents, servants or employees have knowingly used improper materials therein, and also that the product is reasonably fit and suitable for the particular purposes for which it was manufactured and sold.

History: En. Sec. 3, Ch. 263, L. 1947; amd. Sec. 2, Ch. 239, L. 1953; amd. Sec. 1, Ch. 218, L. 1965.

Amendment

The 1965 amendment added subsection (c); and inserted, in brackets, a section number that had been inserted by the compiler in paragraph (a) (1) in the parent volume.

CHAPTER 3—STATE BOARD OF FOOD DISTRIBUTORS—REGULATION OF FOOD STORES AND FOOD STUFFS

Section 27-310. Food stores—permits, offenses for failure to obtain.

27-313. Fees to be deposited with treasurer—payments to be made.

27-310. Food stores—permits, offenses for failure to obtain. The state board of food distributors shall require and provide for the annual registration and licensing of every food store now or hereafter doing business within the state. Upon the payment of a fee of five dollars (\$5.00), the board shall issue a license and provide the insignia designating such store a "certified food store" by the state board of food distributors, to such persons as may be qualified by law to conduct a food store provided such license shall be exposed in a conspicuous place in the food store for which it is issued, and shall expire on the thirtieth day of June following the date

of issue. It shall be unlawful for any person to conduct a food store unless such license has been issued to him by the board.

History: En. Sec. 10, Ch. 49, L. 1939; amd. Sec. 1, Ch. 93, L. 1957.

Amendment

The 1957 amendment increased the license fee for a certified food store from \$2.00 to \$5.00.

Repealing Clause

Section 2 of Ch. 93, Laws 1957 repealed all acts and parts of acts in conflict therewith.

27-313. Fees to be deposited with treasurer—payments to be made. All fees received by the state board of food distributors under this act shall be deposited with the state treasurer and deposited in the earmarked revenue fund for the use of the board. No expenses shall be incurred by said board in excess of the revenue derived from such fees.

History: En. Sec. 13, Ch. 49, L. 1939; amd. Sec. 240, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited with the state treasurer and deposited in the earmarked revenue fund for the use of the board" at the end of the first sentence for "deposited with treasurer of the board"; and deleted second, fourth, fifth and sixth sentences which read: "In enforcing any and all laws affecting or pertaining to food stores licensed herein, all fines paid under the provisions of this act or in connection with the enforcement of this act or any other act concerning food stores or in connection with the enforcement thereof,

shall be paid to the credit of the common school fund of the state of Montana, provided that no salary or expenses of the board of food distributors shall be paid out of the state treasury" and "All expenditures of said board and all expenses necessarily incurred thereby in exercise of its powers or the performance of its duties under this act, shall be paid out of said fund in hands of treasurer of the board. Payments out of said fund shall be made only by warrant or order on said funds drawn by the secretary and countersigned by the president of the state board of food distributors. The treasurer shall give such bond as the board may from time to time require."

CHAPTER 4—SUPERVISION OF MILK INDUSTRY—STATE MILK CONTROL BOARD

Section 27-403. Definitions.

27-404. Milk control board.

27-405. General powers of the milk control board.

27-406. Markets.

27-407. Orders fixing minimum prices.

27-409. Licenses—disposition of income.

27-410. Application for licenses.

27-414. Rules of fair trade practices.

27-416. Reports of dealers—accounting system—records.

27-417. Disposition of fines.

27-426. Bonds required of distributors—amounts—forms and conditions.

27-427. Local advisory boards.

27-428. Judicial review of orders.

27-429. Service of process upon board.

27-401. Declaration of policy relating to milk.

Purpose of Act

Since the Milk Control Act (27-401 et seq.) is aimed at activity which is injurious to health it may be enforced by injunction under section 27-424. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 517.

Reasonable Profit

Reasonable profit, as used in subsection

(k) of this section, contemplates a minimum price at which milk can be sold in view of surrounding circumstances. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 515.

References

Cited in *Montana Milk Control Board v. Maier*, 140 M 38, 367 P 2d 305, 306.

27-402. General purpose.**Minimum Prices**

The means selected to attain the object set forth in this section is a procedure set forth in section 27-406 whereby the milk control board is empowered to establish marketing areas in the state and to pre-

scribe and enforce minimum producer, wholesale, and retail prices in such areas pursuant to the provisions of the Milk Control Act (27-401 et seq.). *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 513.

27-403. Definitions. As used in this act, unless the context otherwise requires, "board" means the state agency created by this act, to be known as the Montana milk control board.

"Person" means any person, firm, corporation or association.

"Producer" means any person who produces milk for fluid consumption within the state, selling same at wholesale to a distributor.

"Distributor" means any person purchasing milk and distributing same for fluid consumption within the state. Said term, however, excludes all persons purchasing milk from a dealer licensed under this act, for resale over the counter at retail, or for consumption on the premises.

"Producer-distributor" means any person both producing and distributing milk for fluid consumption within the state.

"Dealer" means any producer, distributor, or producer-distributor.

"Licensee" means any person who holds a license from the board.

"Association" means any organized group of dealers in a community or marketing area which has been constituted under regulations satisfactory to the board.

"Market" means any area of the state designated by the board as a natural marketing area.

"Consumer" means any person or any agency, other than a dealer, who purchases milk for consumption or use.

"Milk" means fluid milk and cream sold for consumption as such, and for the purposes of this act shall be classified as follows:

Class I milk shall include all bottled or packaged milk, raw, pasteurized and homogenized, low fat, buttermilk and chocolate milk.

Class II milk shall include whipping cream, coffee cream, half-and-half, and skim milk.

The board shall have power and authority to assign fluid milk products hereafter developed to the class which in its discretion it determines to be proper.

History: En. Sec. 3, Ch. 204, L. 1939; amd. Sec. 1, Ch. 192, L. 1959.

two or more of the same" and added all that part of the definition of milk relating to its classification.

Amendment

The 1959 amendment in the definition of market substituted "any area" for "any city, town, or community of the state or

References

Montana Milk Control Board v. Maier, 140 M 38, 367 P 2d 305, 306.

27-404. Milk control board. There is hereby constituted a milk control board to consist of five (5) members, who shall be appointed by the governor, with the consent of the senate, for terms of office as herein provided, and with the following qualifications: No appointee shall be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products in any manner whatsoever; no appointee shall have held elective or appointive public office

during the period of two years immediately preceding his appointment and no appointee shall hold any other public office, either elective or appointive, during his term of office as a member of the milk control board; and not more than three (3) members of the said milk control board shall, at the time of appointment or thereafter during their respective terms of office, be members of the same political party or residents of the same congressional district.

The members of said milk control board shall be appointed within thirty (30) days after passage and approval of this act. The term of office of one member shall expire on July 1, 1960; the term of office of one member shall expire on July 1, 1961; the term of office of one member shall expire on July 1, 1962; the term of office of one member shall expire on July 1, 1963; the term of office of one member shall expire on July 1, 1964; and each succeeding member shall hold his office for a term of five (5) years and until his successor shall have been appointed and qualified. Any vacancy shall be filled by appointment by the governor, with the consent of the senate as hereinbefore provided, for the unexpired term.

Consumer members of the existing milk control board at the time of the passage of this act may be reappointed by the governor at his discretion for any of the terms above mentioned and persons whom he shall appoint for those initial terms expiring in 1960, 1961, and 1962 shall be eligible for reappointment to full five year terms on the board; provided, however, that after 1962 no member other than one who is appointed to fill a vacancy shall be appointed to succeed himself on said board.

Three (3) members of the board shall constitute a quorum for the regular transaction of business.

The board shall choose one (1) of its own members as the chairman, who shall hold office as chairman for one year; provided, election as chairman shall not interfere with that member's right to vote on all matters before the board.

Each member of the board shall receive twenty-five dollars (\$25.00) per diem for each day actually spent in the performance of his official duties, plus his actual necessary traveling and other expenses in going to, attending and returning from meetings of the board and his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the board, but in no event shall a member's per diem payments exceed fifteen hundred dollars (\$1500.00) in any one year.

The board may employ necessary assistants and appoint agents and instrumentalities but all expenditure under this act shall be paid from the receipts hereunder.

The board shall have the power and it shall be its duty to designate an executive secretary who shall serve under the direction and at the pleasure of the board and who shall have charge of the administration of the board's orders, rules, and regulations, and who shall also serve as financial officer of the board and who shall be authorized to accept or receive money paid or to be paid to the board, either as license fees or fines as provided by this act.

Meetings of the board shall be had at least every sixty (60) days at the call of the chairman or a majority of the board. The salary of the secretary is to be fixed by the board and the state board of examiners. The board shall so enforce the act that there shall be no discrimination against any dealer or consumer.

History: En. Sec. 4, Ch. 204, L. 1939; amd. Sec. 1, Ch. 249, L. 1957; amd. Sec. 2, Ch. 192, L. 1959; amd. Sec. 16, Ch. 177, L. 1965.

Amendments

The 1957 amendment made numerous changes and additions in this section. For section prior to amendment see parent volume.

The 1959 amendment completely rewrote this section relating to the composition of the milk control board.

The 1965 amendment deleted a seventh paragraph reading, "Each member of the board shall give bond conditioned for the faithful performance of his duties in the sum of five thousand dollars (\$5,000.00)"; and deleted from the next to last paragraph a final sentence reading, "Such person shall, before he enters upon the discharge of his duties, execute and file a

bond, in such amount as may be fixed by the board, as may be provided by law for public officers."

Effective Date

Section 2 of Ch. 249, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved March 13, 1957.

Police Power

Since the legislature of Montana has acted in exercise of its police power to supervise the milk industry, Art. 15, sec. 20, Montana constitution relating to price-fixing is inapplicable. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

References

Montana Milk Control Board v. Maier, 140 M 38, 367 P 2d 305, 306.

27-405. General powers of the milk control board. (1) The board is hereby vested with the powers, and it shall be its duty to supervise, regulate and control the fluid milk industry of the state of Montana, including the production, transportation, processing, storage, distribution and sale of milk in the state of Montana for consumption within the state, providing however, that nothing contained in this act shall be construed to abrogate or affect the status, force or operation of any provision of public health laws or the law under which the Montana livestock sanitary board is constituted together with the Montana livestock sanitary board regulations or county board of health regulations, or municipal ordinances for the promotion or protection of the public health, but the board shall have the power to cooperate with the state board of health, the Montana livestock sanitary board or any county or city board of health or the state department of agriculture and industry in enforcing the provisions of this act.

(2) The board shall have the power to investigate all matters pertaining to the production, transportation, processing, storage, distribution and sale of milk in the state of Montana and to conduct hearings upon any subject pertinent to the administration of this act. The board shall have the power to subpoena milk dealers, their records, books and accounts, and any other person from whom information may be desired or deemed necessary to carry out the purposes and intent of this act, and may issue commissions to take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the milk control board at its offices in the state capitol, provided at least ten (10) days notice is given to the proposed witness.

(3) It shall be the duty of any sheriff of any county of the state, when requested to do so by the board, to execute any summons, citations or notice which the board may cause to be issued, for which such sheriff shall be authorized to charge the same fee against the funds provided for the milk control board as he might lawfully charge for the same service of such a document if issued from any district court of the state of Montana. Any person, other than a dealer who is cited for violation of the provisions of this act, or cited to show cause why his license should not be revoked, shall receive for his attendance before the milk control board or its duly designated agent the same compensation as is provided for a witness subpoenaed to appear before the district court, which shall be charged against the funds provided for the operation of the milk control board.

(4) Any duly designated agent of the board may administer oath to witnesses, may call and give notice of price hearings when the board is not in session and may conduct hearings or investigations and any such duly designated agent of the board may sign and issue subpoenas requiring witnesses to appear before him or the board, and in addition to the manner provided above for the execution of subpoenas, summons and citations issued by the milk control board to witnesses or dealers, the board, through its designated agent shall have the power to serve said subpoenas, summons or citations upon any person by sending a copy of such subpoena, summons or citation, through the United States mail, postage prepaid, which said mail shall be registered with return receipt attached and such service shall be complete when said registered mail shall be delivered to said person and such receipt returned to the board or its designated agent, signed by the person sought to be summoned, subpoenaed, or cited. Obedience to a subpoena, summons or citation, issued by the board or any person authorized and designated by the board to issue said subpoena, summons or citation, may be enforced by application to any judge of the district court of the county in which such subpoena, summons or citation was issued or to any judge of the district court of the county in which such person subpoenaed, summoned or cited resides and said court shall order compliance with said subpoena, summons or citation and upon the failure of the witness to attend, to testify, or to produce such books or papers or records as the board may have commanded, such witness may be punished for contempt of court as for failure to obey a subpoena issued by or to testify in a case pending before said court.

(5) The board may act as mediator or arbitrator to settle any controversy or issue pertaining to fluid milk among or between producers, distributors, producer-distributor and/or consumers.

The operation and effect of any provision of this act, conferring a general power upon the milk control board, shall not impair or limit any specific power or powers granted to the milk control board by this act.

History: En. Sec. 5, Ch. 204, L. 1939; amd. Sec. 3, Ch. 192, L. 1959.

stituted "department of agriculture and industry" for "department of agriculture, labor and industries"; added all that part of subd. (2) beginning with the words "or who cannot otherwise appear"; in-

Amendment

The 1959 amendment in subd. (1) sub-

served the words "may call and give notice of price hearings when the board is not in session" near the beginning of subd. (4), and substituted the end of that subdivision relating to enforcement of compliance with a summons, citation, or subpoena, for the former provision, for text of which see the parent volume.

Constitutionality

The price-fixing provisions of this section do not offend due process and do not unconstitutionally delegate legislative power. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514, 515.

Action for Unpaid Fees

Under section 27-424 the milk control

board could maintain an action against a dairy operator for unpaid license and assessment fees imposed upon him by the board between 1958 and 1960 without putting the dairy operator out of business by using the provisions of section 27-411 or subjecting him to the penal provisions of section 27-422. *Montana Milk Control Board v. Maier*, 140 M 38, 367 P 2d 305, 307.

Transportation Costs

Milk control board could give producers the option to share in the cost of moving their milk to outside marketing areas. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 924.

27-406. Markets. Pursuant to the declaration of policy relating to milk set forth in section 27-401 of the Revised Codes of Montana of 1947, the milk control board is vested with the duty and authority to designate natural marketing areas which shall together embrace all the geographical area of the state and to prescribe and enforce minimum producer, wholesale, and retail prices in such areas in the manner set forth in this act; provided, that at all times there shall not be less than five (5) natural marketing areas in the state.

(a) Natural marketing areas shall be established forthwith throughout the state by the board; provided that before any proposed natural marketing area is established the board, after notice of at least thirty (30) days, shall hold a hearing or hearings, at a place or places within the proposed area, at which producers and distributors doing business within said proposed natural marketing area, who are licensed by the Montana livestock sanitary board, and the consuming public may present evidence and testify; and in the event the hearing or hearings make it evident to a majority of the board that the establishment of such proposed natural marketing area is in the public interest, the board shall make findings and conclusions and proceed to establish such natural marketing area.

(b) The board shall have the power, from time to time and at its discretion, to adjust and alter the boundaries of natural marketing areas after they have been established, if after a hearing upon notice of at least thirty (30) days to all interested parties it finds and orders such adjustment to be in the public interest.

(c) All previously established marketing areas and all price schedules, rules and regulations issued and promulgated by any previously existing milk control board in this state at the time of passage of this act are in force and effect, are hereby declared to be and remain in force and effect until altered or rescinded in the manner provided by this act.

(d) The board shall at all times maintain current information on quantities of surplus Grade A milk available in the various marketing areas throughout the state, and such information shall be available to all interested parties on request.

History: En. Sec. 6, Ch. 204, L. 1939; amd. Sec. 4, Ch. 192, L. 1959.

Amendment

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

Constitutionality

The price-fixing provisions of this section do not offend due process. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 513.

Minimum Prices

The means selected to attain the object of the Milk Control Act set forth in section 27-402 is the procedure outlined in this section. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 513.

References

Montana Milk Control Board v. Maier, 140 M 38, 367 P 2d 305, 307.

27-407. Orders fixing minimum prices. Prior to the fixing of prices in any market the board shall conduct a public hearing and admit evidence under oath relative to the matters of its inquiry, at which hearing the consuming public shall be entitled to offer evidence and be heard the same as persons engaged in the milk industry. The board shall by means of such hearing or from facts within its own knowledge, investigate and determine what are reasonable costs and charges for producing, hauling, handling, processing, and/or other services performed in respect to milk and what prices for milk in the several localities and markets of the state, and under varying conditions, will best protect the milk industry in the state and insure a sufficient quantity of pure and wholesome milk to adults and minors in the state, and be most in the public interest.

The board shall take into consideration the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states, so that minimum prices which are fair and equitable to producers, distributors and consumers may result.

The board shall, at least ten (10) days prior to the date set for any public hearing on minimum prices, cause notice to be given to the consuming public and the milk industry of the specific factors which shall be taken into consideration in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing, so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

If the board at any time proposes to base all or any part of any official order fixing minimum prices upon facts within its own knowledge, as distinguished from evidence which may be presented to it at a public hearing by the consuming public or the milk industry, the board shall, at least ten (10) days prior to the date set for any public hearing on minimum prices, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

The board, after consideration of the evidence produced at such

hearing, shall make written findings and conclusions and shall fix by official order:

(a) The minimum prices to be paid by the milk dealers to producers and others for milk. Each order fixing minimum prices shall classify milk by forms, classes, grades or uses as the board may deem advisable and shall specify the minimum prices therefor.

The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

No allowance for freight, other than freight for transportation of milk from the farm to plant, shall be charged to a producer by a distributor or dealer unless it is found and ordered by the board, after notice and hearing in the manner hereinbefore specified, that such an additional freight allowance is necessary to permit the movement of milk in the public interest.

All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis of either butterfat or hundred-weight. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

(b) The minimum wholesale prices to be charged for milk in its various forms, classes, grades, and uses when sold by distributors or producer-distributors to retail stores, restaurants, boarding houses, fraternities, sororities, confectioneries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(c) The minimum retail prices to be charged for milk in its various forms, classes, grades and uses when sold by distributors, producer-distributors, and retail stores to consumers.

A minimum producer, wholesale or retail price to be charged for milk shall not be fixed higher than is necessary to cover the costs of ordinarily efficient and economical milk dealers, including a reasonable return upon necessary investment.

The board may, upon its own motion, or upon application in writing from any market, or from any party at interest, alter, revise or amend any official order theretofore made by the board provided that before making, revising, or amending any order fixing prices to be charged or paid for milk in any of its forms, classes, grades or uses, the board shall hold a public hearing on such matter in the same manner provided herein for the original fixing of prices.

History: En. Sec. 7, Ch. 204, L. 1939, amd. Sec. 5, Ch. 192, L. 1959.

Amendment

The 1959 amendment made numerous changes and rewrote this section. For section prior to amendment see parent volume.

Constitutionality

Since the legislature of Montana in enacting this statute acted in the exercise of its police power to supervise the milk industry, Art. 15, sec. 20, Montana constitution has no application. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

The price-fixing provisions of this section do not offend due process and do not unconstitutionally delegate legislative power. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514, 515.

Authority for Institution of Proceedings

Petition disclosed that "unanimous consent of all members of the board" had been had prior to the institution of the proceeding as required by section 27-424, where the petition states that the executive secretary of the board "as such administrative officer, has the authority of said board to institute this action on their behalf under the provisions of R. C. M. 1947, § 27-424." *State ex rel. Montana Milk Control Board v. District Court*, 138 M 179, 355 P 2d 664, 666.

Facts to be Noticed by Board

If the milk control board proposes to base any part of an official order fixing minimum prices upon facts within its own knowledge it must give notice of the specific facts which it will consider. *State ex rel. Montana Milk Control Board v. District Court*, 138 M 179, 355 P 2d 664, 669.

Retail Price

Where retail price charged for some of the milk is more than twice the price paid by the distributor to the producer there is a violation of the statute. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 923.

References

Montana Milk Control Board v. Maier, 140 M 38, 367 P 2d 305, 307.

DECISIONS UNDER FORMER LAW

Price to Schools

A complaint filed by the milk control board charging creamery with selling milk to public and private schools at less than price designated by its official order issued in 1957 failed to state a cause of action as the board had no

authority under the law as it existed prior to the 1959 amendment to regulate the price of milk sold to schools. *Montana Milk Control Board v. Community Creamery Co.*, 139 M 523, 366 P 2d 151, 153.

27-408. Licenses to producers, producer-distributors, and distributors.

Application of Section

License fee exacted by this section and section 27-409 applies to milk which is ultimately sold by a distributor outside an established market area. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 924.

Collection of License Fees

Board may collect license fees based on the whole volume of milk sold by producer whether within a certain marketing area or anywhere else within the state of Montana. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 925.

27-409. Licenses—disposition of income. No producer, producer-distributor, or distributor shall engage in the business of producing or selling milk subject to this act in this state without first having obtained a license from the Montana livestock sanitary board and without being licensed under this act by the milk control board. The annual fee for such license from the milk control board shall be two dollars (\$2.00), shall be due and payable on or before the first day of July, commencing in the year 1959 and shall be deposited by said board to the credit of the general fund.

In addition to said annual license fee, the board shall, in each year, on or before the first day of April, for the purpose of securing funds to administer and enforce this act, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) A fee of not more than five cents (5¢) per hundred weight on the total volume of all milk subject to this act produced and sold by a producer-distributor.

(b) A fee of not more than two and one-half cents ($2\frac{1}{2}\text{¢}$) per hundred weight on the total volume of all milk subject to this act sold by a producer.

(c) A fee of not more than two and one-half cents ($2\frac{1}{2}\text{¢}$) per hundred weight on the total volume of all milk subject to this act sold by a distributor, excepting that which is sold to another distributor.

Said assessment upon producer-distributors, producers, and distributors shall be paid quarterly on or before the fifteenth (15th) day of July, October, January and April of each year, commencing in July of 1959, and the amount of such assessment shall be computed by applying the fee designated by the board to the volume of milk sold in the calendar quarter immediately preceding.

Failure of any producer, producer-distributor, or distributor to pay said assessment when due shall constitute violation of this act and his license under this act shall thereupon automatically terminate and be null and void and of no effect. Reinstatement of a license so terminated shall be effected by payment of a delinquency fee equal to thirty per cent (30%) of the assessment which was due.

All assessments hereinbefore required to be paid shall be deposited by the milk control board in the earmarked revenue fund; and all costs of administering this act, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this act, shall be paid out of milk control board moneys in such fund.

The rates of assessment above provided are maximum rates, and the board may, if it finds the costs of administering and enforcing this act can be derived from lower rates, fix the rates at a less amount on or before the first day of April in any year.

History: En. Sec. 9, Ch. 204, L. 1939; amd. Sec. 6, Ch. 192, L. 1959; amd. Sec. 157, Ch. 147, L. 1963.

Amendments

The 1959 amendment completely rewrote this section. For section prior to amendment see parent volume.

The 1963 amendment substituted "the earmarked revenue fund" for "a special fund which is hereby created and is designated the state milk control fund" in the fifth paragraph; and substituted "board moneys in such fund" for "said state milk control fund" at the end of the fifth paragraph.

Application of Section

License fee exacted by this section and section 27-408 applies to milk which is ultimately sold by a distributor outside an established market area. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 924.

Collection of License Fees

Board may collect fees based on the whole volume of milk sold by producer whether within a certain marketing area or anywhere else within the state of Montana. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 925.

References

Montana Milk Control Board v. Maier, 140 M 38, 367 P 2d 305, 306.

27-410. Application for licenses. An applicant for license to operate as a producer, producer-distributor, or distributor shall file a signed application upon a blank prepared under authority of the board, and an applicant shall state such facts concerning his circumstances and the nature of the business to be conducted as in the opinion of the board are nec-

essary for the administration of this act. Such application shall certify the applicant to be the holder of all licenses required by the Montana livestock sanitary board for the conduct of his business and such application shall be accompanied by the license fee required to be paid.

History: En. Sec. 10, Ch. 204, L. 1939; amd. Sec. 7, Ch. 192, L. 1959.

graph, for text of which see parent volume.

Amendment

The 1959 amendment deleted the former third and fourth sentences of the first paragraph and the entire second para-

References

Montana Milk Control Board v. Maier, 140 M 38, 367 P 2d 305, 306.

27-411. Declining, suspending and revoking licenses.

Action for Unpaid Fees

Under section 27-424 the milk control board could maintain an action against a dairy operator for unpaid license and assessment fees imposed upon him by the board between 1958 and 1960 with-

out suspending or revoking right of dairy operator to do business by using the provisions of this section. Montana Milk Control Board v. Maier, 140 M 38, 367 P 2d 305, 307.

27-412. Repealed.

Repeal

This section (Sec. 12, Ch. 204, L. 1939), relating to the penalty for delinquency in

payment of license fee, was repealed by Sec. 14, Ch. 192, Laws 1959, effective March 9, 1959.

27-414. Rules of fair trade practices. In addition to the general and special powers heretofore set forth, the board shall have the power to make and formulate reasonable rules and regulations governing fair trade practices as they pertain to the transaction of business among licensees under this act and among licensees and the general public. Such reasonable rules and regulations governing fair trade practices shall contain, but shall not be limited to, provisions regarding the following methods of doing business which are hereby declared unfair, unlawful, and not in the public interest:

(a) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by any person, whether in the form of money or otherwise.

(b) The giving of any milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of any customer.

(c) The extension to certain customers of special prices or services not available to all customers who purchase milk of like quantity under like terms and conditions.

(d) The purchasing, processing, bottling, packaging, transporting, delivering or otherwise handling in any marketing area of any milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and minimum retail prices established by the board pursuant to this act.

(e) The payment of a less price than the applicable producer price established by the board pursuant to this act by a distributor to any producer for milk which is distributed to any person, including agencies of the federal, state or local government.

History: En. Sec. 14, Ch. 204, L. 1939; amd. Sec. 8, Ch. 192, L. 1959.

Amendment

The 1959 amendment substituted "and among licensees and the general public" for "within that market" and added everything thereafter in this section.

Preparation of Rules and Regulations

This section was not intended to stand independently, but rather as a mandatory guide for the milk control board in preparing its rules and regulations. *Montana Milk Control Board v. Community Creamery Co.*, 139 M 523, 366 P 2d 151, 153.

Regulations promulgated by the milk control board governing unfair trade practices were invalid where they failed to encompass all five of the unfair methods of doing business which the legislature expressly stated should be contained in their rules and regulations. *Montana*

Milk Control Board v. Community Creamery Co., 139 M 523, 366 P 2d 151, 154.

Validity of Rules and Regulations

Rules and regulations governing unfair trade practices adopted by the milk control board were invalid where they were not in accordance with the delegated authority of the board. *Montana Milk Control Board v. Community Creamery Co.*, 139 M 523, 366 P 2d 151, 154.

Violation of Fair Trade Practices

A violation of fair trade occurs when a party violates properly promulgated rules and regulations of the milk control board, enacted pursuant to this section. *Montana Milk Control Board v. Community Creamery Co.*, 139 M 523, 366 P 2d 151, 153.

References

Montana Milk Control Board v. Maier, 140 M 38, 367 P 2d 305, 306.

27-416. Reports of dealers—accounting system—records. The board shall have the power to require all persons holding licenses under it to file with the board such reports at such reasonable or regular time as the board may require, showing such person's production, sale, or distribution of milk, and any information deemed by the board necessary which pertains to the production, sale or distribution of such milk, either under oath or otherwise, as the board may direct, and failure or refusal to file such reports when directed to do so by the board or its duly designated agent shall constitute grounds for the revocation of such person's license and shall constitute a violation for which such person may be fined as hereinafter provided, one or both, at the discretion of the board.

The board shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

Every distributor and producer-distributor shall keep the following records:

(a) A record of all milk, cream or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, and deductions or charges made, and the use to which such milk or cream was put.

(b) A record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold.

(c) A full and complete record of all milk, cream or dairy products sold, classified as to kind and grade, showing where sold, and the amount received therefor.

(d) A record of the wastage or loss of milk or dairy products.

(e) A record of the items of handling expense.

(f) A record of all refrigeration facilities rented or sold for storage purposes to any person, showing types and sizes of the same, the location of said facilities, and the original, or duplicate original, of all agreements covering rental charges therefor.

(g) A record of all conditional sales of equipment or other property, the location of said property, and the original, or duplicate original, of all conditional sales contracts pertaining thereto.

(h) A record of all moneys loaned to wholesale customers, the terms and conditions of said loans, and the original evidence of the indebtedness based on said loans.

(i) Such other records as the board may deem necessary for the proper enforcement of the act.

History: En. Sec. 16, Ch. 204, L. 1939; amd. Sec. 9, Ch. 192, L. 1959.

Amendment

The 1959 amendment added everything after the first paragraph in this section.

References

Montana Milk Control Board v. Maier, 140 M 38, 367 P 2d 305, 306; Montana Milk Control Board v. Rehberg, 141 M 149, 376 P 2d 508, 516.

27-417. Disposition of fines. All fines assessed in any court for violation of the provisions of this act shall be paid over by the court to the milk control board or its properly designated agent.

All fines received by the board shall be deposited with the state treasurer and shall be placed by him in the earmarked revenue fund. All such fines assessed for violations of this act, are hereby earmarked for the purposes of this act.

History: En. Sec. 17, Ch. 204, L. 1939; amd. Sec. 158, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote the second paragraph of this section. For section prior to amendment, see parent volume.

27-419. Repealed.

Repeal

This section (Sec. 19, Ch. 204, L. 1939), relating to cooperative corporations, was

repealed by Sec. 14, Ch. 192, Laws 1959, effective March 9, 1959.

27-422. Violations made misdemeanors—penalties.

Action for Unpaid Fees

Under section 27-424 the milk control board could maintain an action against a dairy operator for unpaid license and assessment fees imposed upon him by the board between 1958 and 1960 without subjecting the dairy operator to penal provisions of this section. *Montana Milk Control Board v. Maier*, 140 M 38, 367 P 2d 305, 307.

Nuisance

A sale of milk at a price less than the minimum prescribed by the milk control board under section 27-407, being a violation of this section, is a nuisance which may be enjoined by the board under section 27-424. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 517.

References

Cited in *State v. Peterson*, 138 M 257, 356 P 2d 925, 926.

27-423. Constructions, exceptions and limitations.

Collection of License Fees

Milk control board may collect license fees based on whole volume of milk sold by producer whether within a certain

marketing area or anywhere else within the state of Montana. *Heimbichner v. Montana Milk Control Board*, 134 M 366, 332 P 2d 922, 925.

27-424. Additional remedies.

Action for Unpaid Fees

A complaint by the milk control board against a former operator of a dairy

for unpaid license and assessment fees imposed upon him by the board between 1958 and 1960 stated a cause of action,

the board having complied with the provisions of this section. *Montana Milk Control Board v. Maier*, 140 M 38, 367 P 2d 305, 307.

Enforcement of Regulations

The Montana milk control board may restrain a dairy from selling milk for consumption at a price less than the minimum set under section 27-407 by the board. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 517.

Facts to be Noticed

If the milk control board proposes to base any part of an official order fixing minimum prices upon facts within its own knowledge it must give notice of the

specific facts which it will consider. *State ex rel. Montana Milk Control Board v. District Court*, 138 M 179, 355 P 2d 664, 669.

Unanimous Consent of Board

Petition disclosed that "unanimous consent of all members of the board" had been had prior to the institution of the proceeding as required by this section, where the petition states that executive secretary of the board "as such administrative officer, has the authority of said board to institute this action on their own behalf under the provisions of R. C. M. 1947, § 27-424." *State ex rel. Montana Milk Control Board v. District Court*, 138 M 179, 355 P 2d 664, 666.

27-426. Bonds required of distributors—amounts—forms and conditions. Every distributor before purchasing any milk from a producer shall execute and deliver to the milk control board a surety bond in the minimum sum of one thousand dollars (\$1000.00), executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Said bond shall be upon a form approved by the board, and shall be conditioned upon the payment in the manner required by this act, of all amounts due to producers for milk purchased by such licensee or applicant during the license year. Said bond shall be to the state in favor of every producer of milk. In case of failure by a distributor to pay any producer or producers for milk in the manner required by this act, the board shall proceed forthwith to ascertain the names and addresses of all producer-creditors of such distributor, together with the amounts due and owing to them and each of them by such distributor, and shall request all such producer-creditors to file a verified statement of their respective claims with the board. Thereupon the board shall bring an action on the bond on behalf of said producer-creditors. Upon any action being commenced upon said bond, the board may require the filing of a new bond; and immediately upon a recovery in any action upon such bond, such distributor shall file a new bond; and upon failure to file same within ten (10) days in either case, such failure shall constitute grounds for the revocation or suspension of the license of such distributor. In the event that recovery upon the bond is not sufficient to pay all of the claims as finally determined and adjudged by the court, any such amount recovered shall be divided pro rata among said producer-creditors.

The minimum bond of one thousand dollars (\$1000.00) shall be required of distributors purchasing an average daily quantity of milk of less than one hundred gallons; distributors purchasing an average daily quantity of one hundred gallons and less than two hundred gallons during any calendar month during a license year shall post a bond in the amount of two thousand dollars (\$2000.00); distributors purchasing an average daily quantity of two hundred gallons and less than three hundred gallons during any calendar month during a license year shall post a bond in the amount of three thousand dollars (\$3000.00); distributors purchasing an average

daily quantity of three hundred gallons or more during any calendar month during a license year shall post a bond in the sum of five thousand dollars (\$5000.00).

In the event that any distributor so increases his purchases of milk during the license year that said purchases exceed the amount for which said distributor is bonded, said distributor shall forthwith post such additional bond or bonds as may be required to comply with the provisions of this section.

Failure of any distributor who purchases milk from producers to execute and deliver the bond as herein provided and required shall constitute a violation of this act; failure of any such distributor to post such additional bond or bonds as may be required to comply with the provisions of this act shall likewise constitute a violation of this act.

History: En. Sec. 10, Ch. 192, L. 1959.

27-427. Local advisory boards. Whenever a public hearing is scheduled by the milk control board in any marketing area for the purpose of fixing prices, the board shall, at least ten (10) days prior to the date set for such hearing, appoint a local advisory board, the function of which shall be to assist and advise the milk control board in matters pertaining to the production and marketing of milk in said marketing area. The local advisory board shall consist of two producers and two distributors, who are respectively actively engaged in milk production and distribution in the area. Such local advisory board shall meet with the milk control board at the call of the milk control board before, during, or after such public hearing to fix prices; and a verbatim transcript of all matters and things discussed by the milk control board with such local advisory board at all such conferences or meetings shall be prepared and shall be considered a part of the record of the hearing. The members of such local advisory board shall serve without pay, but in case conferences or meetings with the milk control board are held outside of the marketing area in which they produce or distribute milk they shall be entitled to receive actual and necessary expenses incurred in attending such meetings or conferences. In no event shall there be more than three meetings or conferences between the milk control board and such local advisory board; and in all events such local advisory board shall cease to exist when the milk control board promulgates its decision or order fixing prices following the public hearing heretofore mentioned.

History: En. Sec. 11, Ch. 192, L. 1959.

27-428. Judicial review of orders. Any person or persons, jointly or severally, aggrieved by any decision or order of the milk control board may present to a court of record a petition, duly verified, setting forth that such decision or order is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within twenty (20) days after the filing and posting of the decision or order in the office of the board as required by section 27-413 of the Revised Codes of Montana of 1947.

Upon presentation of such petition, the court may allow a writ of certiorari directed to the board to review such decision or order of the board and shall prescribe therein the time within which a return thereto must be made to the court and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The writ shall command the board to certify fully to the court, at a specified time and place, a transcript of the record and proceedings, describing or referring to them with convenient certainty; that the same may be reviewed by the court, and may command the board to desist from further proceedings in the matter to be reviewed.

The board shall not be required to return the original papers acted upon by it, but it shall be sufficient for the board to return certified or sworn copies thereof, or of such portions thereof, as may be called for by such writ.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

When any such writ is granted, the cause shall have precedence upon the calendar of the court, and judgment and decree shall be entered therein as expeditiously as possible. The court shall affirm, modify, or reverse the decision or order of the board in accordance with law.

History: En. Sec. 12, Ch. 192, L. 1959.

27-429. Service of process upon board. When any petition or complaint is filed in any court naming the milk control board as a party, process may be served upon said board by delivering to, and leaving with, the executive secretary of said board, at his office, at the state capitol, a true copy of the summons, writ, or order, as the case may be, and a true copy of the complaint, petition, or application upon which such summons, writ, or order was based. In case of the absence of the executive secretary from his office, the assistants, clerks, auditors, accountants, or other personnel in his said office shall accept and receipt for such service.

History: En. Sec. 13, Ch. 192, L. 1959.

Separability Clause

Section 15 of Ch. 192, Laws 1959 read "If any section, subdivision, sentence or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

"Section 27-412 and section 27-419 of the Revised Codes of Montana of 1947, shall be, and the same are, hereby repealed."

Section 16 of Ch. 192, Laws 1959 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 17 of Ch. 192, Laws 1959 provided the act should be in effect from and after its passage and approval. Approved March 9, 1959.

Repealing Clauses

Section 14 of Ch. 192, Laws 1959 read

CHAPTER 5—OLEOMARGARINE

27-517. Revocation of licenses.

Cross-Reference

Application of Montana Rules of Civil

Procedure to this section, see M. R. Civ. P., Rule 81(a), Table A.

CHAPTER 6—FOOD SERVICE ESTABLISHMENTS, MARKETS AND MANUFACTURERS

- Section 27-601. Findings and declaration of policy.
27-602. Definitions.
27-603. License required.
27-604. Fee—term of license.
27-605. Cancellation or denial of license—procedure.
27-606. Diseased persons not to work.
27-607. Rules and regulations—co-operative agreements.
27-608. Inspections.
27-609. Penalty.
27-610. License fee—supersedes other fees.

27-601. Findings and declaration of policy. It is hereby found and declared that the public welfare requires control and regulation of the operation of manufacturers and purveyors of food and drink as defined in section 2 [27-602], hereof, and of the sale, handling and processing of articles of food in connection therewith, and the control, inspection and regulation of persons engaged therein, in order to prevent or eliminate insanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found and declared that the regulation of manufacturers and purveyors of food and drink as above outlined is in the interest of social well-being and the health and safety of the state and all of its people.

History: En. Sec. 1, Ch. 122, L. 1965.

Title of Act

An act to regulate manufacturers and purveyors of food and drink, and establishments preparing or storing food for human consumption; defining terms; providing for licensure and license fee; and providing procedure for cancellation or denial of license; providing for control of persons working when afflicted with contagious or infectious disease; empowering state board of health of Montana to make and enforce all necessary regulations in-

cluding sanitary standards for such establishments; and, to establish co-operative agreements with other Montana agencies; providing for inspections, sampling, and report of inspection; making reports of inspections evidence; prescribing penalties; providing for fee required by this act to supersede other fees for same purpose; directing that unconstitutionality of a part of this act shall not affect or impair the remainder; and repealing section 27-111, Revised Codes of Montana, 1947, as amended or supplemented.

27-602. Definitions. Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(a) "Person" includes any individual, partnership, corporation, association, co-operative group or other entity engaged in the business of operating or owning or offering the services of a food manufacturing establishment, meat market or food service establishment.

(b) "Board" as used in this act, shall mean the state board of health of the state of Montana.

(c) The term "Secretary" shall mean the secretary and/or executive officer of the state board of health as designated by the board.

(d) "Food" as used in this act, shall mean any raw, cooked or processed edible substances, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

(e) "Food manufacturing establishment" means any building or structure or enclosure, or any part thereof, and all buildings in connection, kept,

used or maintained for manufacture or preparation of food or drink for wholesale or retail sale, but shall not include milk producers, milk pasteurization plants, milk product manufacturing plants or slaughterhouses.

(f) "Meat market" means any building or structure or enclosure, or any part thereof, and all buildings in connection, kept, used or maintained to cut, prepare, store or display fresh and/or cured meat and meat products, and where fresh and/or cured meat and meat products are sold to the public.

(g) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tea-room, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, night club, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public or other similar place in which food or drink is prepared, served or provided the public with or without charge on the premises or elsewhere; provided the term "food service establishment" shall not be construed to mean establishments, vendors, or vending machines which sell or serve only packaged non-perishable foods in their unbroken original containers or any private organization serving their own members.

History: En. Sec. 2, Ch. 122, L. 1965.

27-603. License required. Each year, every person engaged in the business of conducting or operating a food manufacturing establishment, meat market or food service establishment as defined in section 2 [27-602] shall procure a license issued by the state board of health. A separate license shall be required for each such establishment, however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed. Any person owning and operating one or more vending machines shall be required to procure only one license. Application for such license shall be made in writing to the board on such forms and with such pertinent information as it may deem necessary. Such licenses shall be granted as a matter of right, unless conditions exist which are grounds for cancellation, or denial of a license as hereinafter set forth, and subject to the right of applicant for license to hearing and judicial review as hereinafter set forth.

History: En. Sec. 3, Ch. 122, L. 1965.

27-604. Fee—term of license. (a) There shall be paid to the board with each application for such license or for renewal of such license, an annual license fee of five dollars (\$5). Fees collected by the state board of health for licenses issued shall be transmitted to the state treasurer and placed to the credit of the general fund.

(b) Each license shall expire on December 31st following its date of issue, unless canceled for cause. Renewal may be obtained annually by paying the required annual license fee. Such license shall not be trans-

ferable nor be applicable to any premises other than that for which originally issued.

(c) Establishments defined under section 2 [27-602] owned or operated by a county or the state or its municipal corporations shall be exempt from fees and licensure hereunder but shall comply with all other requirements of this act including regulations adopted under authority of this act.

History: En. Sec. 4, Ch. 122, L. 1965.

27-605. Cancellation or denial of license—procedure. (a) The secretary of the board may cancel or deny any license if he finds, after proper investigation by a representative of the board, that: The licensee has violated provisions of this act or any regulation effective under this act or any other act administered by the board, and the licensee has failed or refused to remedy or correct the violation. Submission to the board of an acceptable plan of correction within ten (10) days after receipt from the secretary of written notice of the violation, and execution of an acceptable plan within the time prescribed in the written notice of approval thereof by said secretary shall be a bar to prosecution for violation.

(b) No license shall be denied or canceled by the secretary of the board without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled. In such case, licensee must make written request to the secretary of the board for a hearing within five (5) days after notice of the grounds or charges has been received.

(c) When a multiple type establishment is licensed by the board, the denial or cancellation of said license may affect the entire establishment or only a portion of same as determined by the secretary of the board (a multiple type establishment includes two or more of the following: refrigerated locker, frozen food processing plant, food manufacturing establishment, meat market, or food service establishment).

(d) Upon cancellation of a license or the right to operate one or more of the multiple type establishments under the same license, the license certificate shall be returned to the secretary for destruction or deletion of types of establishment as the secretary may direct in his notice of cancellation.

(e) Any order made by the secretary, after hearing as provided herein, denying or canceling any license may be reviewed by application for writ of review (certiorari) commenced in the district court of the county in which the licensed premises are located, within ten (10) days from the date of notice in writing of the secretary's order of denial or canceling such license has been served upon him.

(f) Whenever the board shall furnish evidence to the county attorney of any county in this state, such county attorney shall prosecute any person, persons, firm or corporation violating any provisions of this act, or any rules or regulations effective under this act.

History: En. Sec. 5, Ch. 122, L. 1965.

27-606. Diseased persons not to work. No person afflicted with any contagious or infectious disease shall work or be permitted to work in or about any establishment listed and defined in section 2 [27-602], nor in the handling, dealing or processing of any human food in connection therewith.

History: En. Sec. 6, Ch. 122, L. 1965.

27-607. Rules and regulations—co-operative agreements. (a) The board is hereby empowered to prescribe and to enforce rules and regulations and to prescribe such procedures as are necessary to preserve the public health and safety. These rules and regulations shall relate to the operation of all those establishments defined in section 2 [27-602], hereof, and include coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

(b) The board is hereby authorized to enter into co-operative agreements with any of the state agencies, political subdivisions and municipal corporations for the purpose of carrying out the provisions of this act, or any part thereof.

History: En. Sec. 7, Ch. 122, L. 1965.

27-608. Inspections. (a) The board, through its secretary and employees, and through local, county and district health officers, sanitarians or other authorized representatives shall make all necessary investigations and inspections for enforcement of this act. Each local, county or district health officer, sanitarian or other authorized representative shall make regular inspections as the rules and regulations of the state board of health may direct, and such special inspections as the board may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the board may direct.

(b) All persons authorized by this act or by regulations adopted under this act shall have free access at all reasonable hours to any of the establishments listed and defined in section 2 [27-602], for the purpose of making inspections and securing samples when necessary.

(c) Licensees under this act shall furnish to such inspectors who shall apply to him for the purpose and tender to him the value of same, a sample or samples sufficient for analysis of any food as such inspector shall request.

(d) Whenever such inspector finds or has probable cause to believe that any such food is filthy, decomposed, putrid, contaminated or capable of causing foodborne illness, he shall issue in writing a report thereof to said licensee stating the reasons therefor and recommending withholding the same from the public as food for humans. A duplicate copy of such report, properly authenticated, shall be admissible in evidence in any action or proceeding wherein the condition of said food at the time of such inspection is material to such action or proceeding.

History: En. Sec. 8, Ch. 122, L. 1965.

27-609. Penalty. Any person violating any provision of this act or regulation made hereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for the first offense, and not less than seventy-five dollars (\$75) nor more than two hundred dollars (\$200) for the second offense; and for the third and subsequent offenses, by a fine of not less than two hundred dollars (\$200) and imprisonment in the county jail not to exceed ninety (90) days.

History: En. Sec. 9, Ch. 122, L. 1965.

27-610. License fee—supersedes other fees. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing fees and charges by the state board of health for like purposes or intent which may be existent prior to the adoption of this act.

History: En. Sec. 10, Ch. 122, L. 1965.

Separability Clause

Section 11 of Ch. 122, Laws 1965 read "Separability clause. If any clause, sentence, paragraph, section or part of this act, shall for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair nor invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in

which said judgment or decree shall have been rendered."

Repealing Clause

Section 12 of Ch. 122, Laws 1965 read "Repeal. All acts or parts of acts in conflict herewith are hereby repealed and specifically section 27-111, Revised Codes of Montana, 1947."

Effective Date

Section 13 of Ch. 122, Laws 1965 read "Effective date. This act is effective January 1, 1966."

REVISED CODES OF MONTANA

VOLUME 3

Part 1

1965 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 3 (PART 1) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3
(PART 1) THROUGH VOLUME 397, PACIFIC
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OF

MONTANA

A HISTORY

1792-1900

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For index see pocket supplement to Replacement Volume 9

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CHAPTER 1—STATE BOARD OF FORESTRY—FOREST CONSERVATION AND FIRE PROTECTION

- Section 28-105. Powers of board.
28-111. Determination of costs of fire protection—certification—tax levy.
28-123. Disposal of moneys.
28-124. Disbursement of moneys.

28-105. Powers of board. To effectuate, accomplish and maintain the purposes of this act, the board is hereby authorized and empowered:

(a) To classify the forest land areas of the state for which conservation and fire protection measures are reasonably required, and to change or modify such classification from time to time as in its judgment shall be proper.

(b) To create organized forest fire protection districts; provided, however that before such district be created the board shall hold a hearing in any county in which such proposed district or a part thereof shall be included and shall give notice of such hearing at least twenty (20) days in advance thereof to all owners to be affected by such proposed district; service of such notice may be made by registered or certified mail or by publication in a newspaper published in the county in which such hearing is to be held, and if no newspaper is published in such county then in a newspaper having a general circulation therein; provided, further, that no forest fire protection district may be created unless approved in writing by vote of not less than seventy-five per cent (75%) of the owners representing at least fifty-one per cent (51%) of the acreage to be involved in such proposed forest fire protection district.

(c) To provide through the state forester for forest fire protection of any forest lands by the state forester's organization, or by contract or any other feasible means, in co-operation with any federal, state or other recognized agency or agencies.

(d) To make and enforce reasonable rules and regulations for the purpose of enforcing and accomplishing the provisions and purposes of this act; provided, however, such rules and regulations shall not conflict with the powers of the state board of land commissioners.

(e) To co-operate with the government of the United States and any of its bureaus, services and agencies in accordance with federal statutes and regulations thereunder.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963.

Amendment

The 1963 amendment added the provisos to paragraph (b).

Effective Date

Section 2 of Ch. 83, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 27, 1963.

28-109. Duty of owner of classified forest land.

References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

28-111. Determination of costs of fire protection—certification—tax levy. The state forester will prepare a fire protection plan, for the approval of the board in which fire protection costs for each classification within each protection zone is determined. The board will establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land. The state forester will request the legislature to appropriate the state's portion as approved by the board. After the appropriation is made by the legislature, the board will cause an assessment to be made on the owners of classified forest land, as specified in section 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

On or before the second Tuesday in August of each year, the secretary shall determine the names of all owners who shall have failed to provide the forest fire protection for their lands required by this act, together with the description of such lands and the acreage thereof, and calculate the total amount due to the board from each such owner for such forest fire protection which shall not exceed the maximum hereinbefore specified.

The secretary shall submit a statement of the foregoing to the board and upon approval thereof by the board, the secretary shall certify in writing to the county assessor of each county, the names of such owners of forest lands in his county, together with a description of such lands and a statement of the amount so found to be due and owing by each of such owners to the board for forest fire protection.

Upon receiving such certificate from the secretary showing the amount due, the county assessor shall extend the amounts so certified upon the county tax rolls covering such lands, and such sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums so collected shall be promptly transmitted to the state treasurer, who is hereby required to deposit the same in the agency fund to the credit of the state forester.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in the last sen-

tence in the fourth paragraph, substituted "the agency fund to the credit of the state forester" for "a special fund designated the foresters' co-operative work fund, as provided for in section 81-1410."

28-123. Disposal of moneys. The following funds may be expended as directed by the board for fire prevention, detection and suppression: All

moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for the violations of this act; the state's share of the co-operative fire protection funds allocated by the federal government and any other funds provided for the purposes herein indicated. All other co-operative funds collected, appropriated or allocated for the use of the state forester, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of wind-breaks and woodlots in localities where such forest plantings are helpful, and funds for other co-operative work, shall not be expended except for the specific purposes for which the same were collected, appropriated or allocated.

History: En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a sentence at the beginning of the section which read: "In compliance with section 81-1410,

all moneys received from all public agencies, private agencies and individuals co-operating with the state forester or the board of forestry, shall be deposited with the state treasurer and placed to the credit of the foresters' co-operative work fund."

28-124. Disbursement of moneys. All co-operative moneys collected under the authority of section 28-111 and appropriated or allocated for the use of the state forester and deposited with the state treasurer shall be transferred to the earmarked revenue fund. Such moneys may then be paid out after approval and request of the said board and all vouchers or claims shall be signed on behalf of the said board by the secretary thereof.

History: En. Sec. 24, Ch. 128, L. 1939; amd. Sec. 218, Ch. 147, L. 1963.

Amendment

The 1963 amendment divided the former first sentence into two sentences; inserted "under the authority of section 28-111 and" after "collected"; deleted "in the foresters' co-operative work fund" after "state treasurer"; inserted "transferred to the earmarked revenue fund" at the end of the first sentence and "Such moneys

may then be" at the beginning of the second sentence; and deleted a former second sentence which read, "The state board of examiners is hereby authorized to approve for payment (out of any moneys available for purposes designated) all claims properly executed and submitted in the manner provided by law to the person, firm, corporation or public or private agency entitled thereto in compliance with the provisions of this act."

CHAPTER 3—ESTABLISHMENT OF STATE FOREST AND CONSERVATION EXPERIMENT STATION

Section 28-304. Reports—disposition of income.

28-304. Reports—disposition of income. The state board of education may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the state board of education may direct, and as the interests of the state and of science and industry may demand.

Income received by the station shall be deposited in the state treasury and used for the purposes of administering this act.

History: En. Sec. 4, Ch. 141, L. 1937; Amendment

amd. Sec. 234, Ch. 147, L. 1963.

The 1963 amendment added the second paragraph.

CHAPTER 6—PROTECTION AND CONSERVATION OF FOREST AND FARM RESOURCES BY COUNTY COMMISSIONERS

28-601. Authority of county commissioners to protect range, etc.

References

Stocking v. Johnson Flying Service, 143
M 61, 387 P 2d 312.

28-603. Powers of board.

References

Stocking v. Johnson Flying Service, 143
M 61, 387 P 2d 312.

TITLE 29—FRAUDULENT CONVEYANCES

CHAPTER 1—UNIFORM FRAUDULENT CONVEYANCE ACT

29-105. Conveyances by persons in business.

Joinder of Actions

A creditor may join with his cause of action alleging indebtedness a second cause of action alleging that debtor's giving of mortgages and conveyance of certain property was without fair considera-

tion and made him insolvent, and a third cause of action alleging that after executing the mortgages, he had unreasonably small capital in his business. Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P 2d 703, 709.

29-109. Rights of creditors whose claims have matured.

Money Judgment

The right to seek a money judgment is merely collateral to the primary right to

set aside the conveyance. Cahill-Mooney Constr. Co. v. Ayres, 140 M 464, 373 P 2d 703, 705.

TITLE 30—GUARANTY, INDEMNITY AND SURETYSHIP

Chapter 6. Letters of credit, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 2—GUARANTORS—LIABILITY AND EXONERATION

30-208. (8188) What dealings with debtor exonerate guarantor.

Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon

vendees, vendors, by such rescission of contract, lost their right to bring action against vendees' guarantor for unpaid purchase price. *Scott v. Kyhl*, 141 M 523, 379 P 2d 803.

CHAPTER 4—SURETYSHIP—SURETIES AND THEIR LIABILITY

30-407. (8201) Surety discharged by certain acts of the creditor.

Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon

vendees, vendor, by such rescission of contract, lost their right to bring action against vendees' guarantor for unpaid purchase price. *Scott v. Kyhl*, 141 M 523, 379 P 2d 803.

CHAPTER 6—LETTERS OF CREDIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

30-601 to 30-609. (8210 to 8218) Repealed.

Repeal

These sections (Secs. 3710 to 3718, Civ. C. 1895; Secs. 5695 to 5703, Rev. C. 1907; Secs. 8210 to 8218, R. C. M. 1921), relat-

ing to letters of credit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 31—HIGHWAY PATROL

- Chapter 1. Montana highway patrol—creation—powers and duties, 31-110, 31-114, 31-127, 31-135, 31-138, 31-163 to 31-169.
2. Highway patrolmen's retirement system, 31-201, 31-205, 31-206, 31-209, 31-210.

CHAPTER 1—MONTANA HIGHWAY PATROL—CREATION— POWERS AND DUTIES

- Section 31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock.
31-114. Fees—fines and forfeitures.
31-127. What persons shall not be licensed.
31-135. Licenses issued to operators and chauffeurs.
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31-167. Report to highway patrol board of suspension or revocation of licenses.
31-168. Offenses furnishing ground for suspension or revocation of license.
31-169. Review of administrative actions.

31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock. In addition to the above duties, the highway patrol supervisor and all patrolmen are authorized under this act to make arrests for the following offenses committed; if committed in the presence of said supervisor or any of said patrolmen, or if committed in a rural district, upon the request of a peace officer, or if committed in a city or town of less than twenty-five hundred (2500) inhabitants, upon the request of any peace officer, or the mayor of said city or town: The crimes of murder, assault with a deadly weapon, arson, burglary, larceny, kidnapping, illegal transportation of narcotics, or violation of the Dyer act regarding the transportation of stolen automobiles. Provided, that such highway patrolmen shall have no authority and are expressly forbidden to make arrests in labor disputes or in preventing violence in connection with strikes, and shall not be permitted to perform any duties whatsoever in connection with labor disputes, strikes or boycotts.

Patrolmen shall be deemed police officers in making arrests in all offenses occurring on the highways and in the use of motor vehicles or the registration thereof, and for the purpose of serving warrants of arrest in connection with such violations.

The patrolmen are also hereby empowered to stop any truck or motor vehicle in which livestock or livestock products are being transported and

ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products; and whenever the patrolmen have good reason to believe that such livestock or livestock products have been stolen, they are empowered to take possession of the same until such livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965.

Amendment

The 1965 amendment deleted from the end of the first paragraph a clause reading "and shall not be permitted to congregate or act as a unit in one county to suppress riots or preserve the peace"; and deleted the former third paragraph, for text of which see parent volume.

Repealing Clause

Section 2 of Ch. 63, Laws 1965 repealed all acts parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 63, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

31-114. Fees—fines and forfeitures. All fees, fines and forfeitures collected in any court from persons apprehended or arrested by patrolmen for violation of this act and the laws and regulations relating to the use of state highways and the operation of vehicles thereon must be paid to the state treasurer of Montana and by him credited to the general fund of the state, except the penalty assessments levied and paid as provided for in section 4 [75-5304] of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund; and at the time of payment of any such fee, fine or forfeiture there shall be filed with the state treasurer a complete statement showing the total of the fees, fines or forfeitures received or incurred, which statement shall give the title of the court and cause and be subscribed to by the person or officer making such payments.

History: En. Sec. 14, Ch. 199, L. 1943; amd. Sec. 10, Ch. 226, L. 1965.

Amendment

The 1965 amendment inserted "except the penalty assessments levied and paid

as provided for in section 4 of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund" after "general fund of the state."

31-127. What persons shall not be licensed. The board shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of sixteen (16) years, with these exceptions:

(a) The board may issue an operator's license to a person who is fifteen (15) years if he has passed a driver's education course approved by the Montana highway patrol and the superintendent of public instruction.

(b) The board may issue a restricted license as hereinafter provided to any person who is at least thirteen (13) years of age;

2 to 8. * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 267, L. 1947; amd. Sec. 1, Ch. 60, L. 1955; amd. Sec. 1, Ch. 227, L. 1965.

Amendment

The 1965 amendment changed the format of subsection (1); increased the age

set out in the preliminary paragraph of subsection (1) from fifteen to sixteen; and inserted paragraph (1) (a).

Cross-Reference

Driver education courses, secs. 75-5301 to 75-5309.

31-131. Application of minors.

References

Castle v. Thisted, 139 M 328, 363 P 2d 724, 725.

31-135. Licenses issued to operators and chauffeurs. (a) The highway patrol board shall have authority to appoint county treasurers and other qualified officers to act as its agent or agents for the sale of driver's licenses, and shall make necessary rules and regulations governing such sales. The board shall, upon payment of four dollars (\$4), issue to every applicant qualifying therefor, an operator's or chauffeur's license as applied for, which license shall be purchased biennially on or before the operator's or chauffeur's birthday, and shall expire on the anniversary of the date of birth of the operator or chauffeur, two (2) years or less after the date of issue, and shall contain a photograph of such licensee in such size and form as may be prescribed by the highway patrol board, a distinguishing number issued to the licensee, the full name, date of birth, resident address, and a brief description of the licensee and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink, immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(b) The board shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight, and may also, in the board's discretion, have such applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. This examination shall not be required of any applicant who has successfully completed such an examination within the preceding five year period.

(c) Whenever the board issues an original license to a person under the age of twenty-one (21) years, such license shall be designated and clearly marked as a "provisional license." Any license so designated and marked may be suspended by the board for a period of not more than twelve (12) months, when its record discloses that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the board may for any reasonable cause, as shown by its records, designate the renewal of the license as provisional, otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(d) It shall be unlawful for any person to have in his possession or under his control, more than one (1) Montana operator's or chauffeur's license at any one time.

History: En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963.

Amendment

The 1963 amendment completely rewrote subsection (b), for previous text of which see parent volume; and made a minor change in punctuation.

Effective Date

Section 2 of Ch. 228, Laws 1963 provided the act should be in effect upon its passage and approval. Approved March 9, 1963.

Validity of Amendment

The 1961 amendment of this section

[House Bill No. 342] was not rendered invalid because the deciding vote therein was cast by the lieutenant governor on the third reading, where at that time the senators then present and voting, were equally divided. *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

31-138. Duplicate certificates. In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this act is lost or destroyed, the person to whom the same was issued may, upon the payment of a fee of one dollar (\$1.00), obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the board that such permit or license has been lost or destroyed.

History: En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953; amd. Sec. 16, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee for duplicate certificates from 50¢ to \$1.00.

31-163. Driver license compact enacted—text. This act shall be known and may be cited as the "Driver License Compact."

ARTICLE I—FINDINGS AND DECLARATION OF POLICY

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II—DEFINITIONS

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III—REPORTS OF CONVICTION

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV—EFFECT OF CONVICTION

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V—APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI—APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other co-operative arrangement between a party state and a nonparty state.

ARTICLE VII—COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party

states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 154, L. 1963.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation in driver licensing and the reporting of convictions and to be known as the Driver License Compact; setting forth the basic purposes of the compact; defining certain terms used in act; requiring party state to report convictions to licensing authority of home state of licensee; providing party state may give same effect of conviction regardless of jurisdiction of occurrence; providing that license authority in party state shall not issue license to party whose license has been suspended, revoked or to

party who fails to surrender license of another party state; providing that adoption of compact will not nullify existing statutes; providing for administrator of act; providing for entry and withdrawal from compact; providing for construction and severability of act; providing that if any part of act held unconstitutional it shall not affect remaining parts of act; defining "licensing authority" and "executive head"; providing authority to furnish information to member states; providing that administrator shall not be entitled to additional compensation; requiring agencies or court to report to state agency; repealing all acts or parts of acts in conflict herewith.

31-164. Highway patrol board as licensing authority—information and documents furnished. As used in the compact, the term "licensing authority" with reference to this state, shall mean the Montana highway patrol board. Said board shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact.

History: En. Sec. 2, Ch. 154, L. 1963.

31-165. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

History: En. Sec. 3, Ch. 154, L. 1963.

31-166. Governor as executive head. As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

History: En. Sec. 4, Ch. 154, L. 1963.

31-167. Report to highway patrol board of suspension or revocation of licenses. Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the Montana highway patrol board within five (5) days on forms furnished by the Montana highway patrol board.

History: En. Sec. 5, Ch. 154, L. 1963.

31-168. Offenses furnishing ground for suspension or revocation of license. Items enumerated in Article IV (a), subsections (1), (2), (3) and (4) [31-163] of this act refer specifically to sections 94-2507, 32-2142, 94-114 and 32-1202, Revised Codes of Montana, 1947, respectively.

In addition to convictions mentioned above the Montana highway patrol board for the purpose of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for convictions of: 1. perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (31-154, Revised Codes of Montana, 1947) and; 2. three (3) convictions of reckless driving committed within a period of twelve (12) months (32-2143, Revised Codes of Montana, 1947).

History: En. Sec. 6, Ch. 154, L. 1963.

31-169. Review of administrative actions. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the "Driver License Compact" shall be subject to review pursuant to the provisions of section 31-152, Revised Codes of Montana, 1947, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

History: En. Sec. 8, Ch. 154, L. 1963.

pealed all acts or parts of acts in conflict therewith.

Repealing Clause

Section 7 of Ch. 154, Laws 1963 re-

CHAPTER 2—HIGHWAY PATROLMEN'S RETIREMENT SYSTEM

- Section 31-201. Definitions.
- 31-205. Payments into the Montana highway patrolmen's retirement account—investment.
- 31-206. Rules and regulations—actuarial data.
- 31-209. Payments by contributors.
- 31-210. Contributions by the state of Montana.

31-201. Definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired patrolman," any person in receipt of a retirement allowance under this act.

"Board," the Montana highway patrolmen's retirement board.

"Compulsory retirement age," sixty years of age.

"Contributor," any person who has accumulated deductions in the fund, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account," the Montana highway patrolmen's retirement account in the agency fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years' service or more.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service with the Montana highway patrol.

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 37, L. 1945;
amd. Sec. 1, Ch. 243, L. 1955; amd. Sec.
201, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the definition of "Account" for a paragraph reading, "'Fund,' the Montana highway patrolmen's retirement fund."

31-205. Payments into the Montana highway patrolmen's retirement account—investment. All appropriations made by the state of Montana, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit said payments to the Montana highway patrolmen's retirement account in the agency fund. Whenever there is on deposit in the Montana highway patrolmen's retirement account a sum in excess of twenty-five thousand dollars (\$25,000.00), such excess will be invested by the state board of land commissioners as part of the long term investment fund and any of the account less than twenty-five thousand dollars

(\$25,000.00) in amount shall be invested by the state board of land commissioners as part of the short term investment fund when so directed by the Montana highway patrolmen's retirement board.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the references to the "Montana highway patrolmen's retirement account in the agency fund" for references to the "Montana highway patrolmen's retirement fund."

31-206. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary, and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "account" for "fund" in the last sentence.

31-209. Payments by contributors. Every member shall be required to contribute into the account a sum equal to five per cent (5%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account, provided that when a member has served twenty-five (25) years in the Montana highway patrol all payments by him and contributions to his credit from the account shall cease.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963.

posited to his credit in the account" for "credited to his account in the fund"; and substituted "account" for "fund" in two other places.

Amendment

The 1963 amendment substituted "de-

31-210. Contributions by the state of Montana. The state of Montana shall annually contribute to the account fifteen per cent (15%) of all moneys received by the state of Montana from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "account" for "fund."

TITLE 32—HIGHWAYS, BRIDGES AND FERRIES

- Chapter 3. Supervision of public highways, 32-314, 32-317 to 32-321.
7. Public bridges, 32-711.
 10. Obstructions and encroachments, 32-1014.
 11. Speed and traffic regulations, 32-1127, 32-1131.
 16. State highway commission and highway engineer—powers and duties, 32-1601, 32-1602, 32-1615, 32-1615.2, 32-1615.3, 32-1619, 32-1626 to 32-1631.
 19. Montana toll bridge authority, 32-1905.
 20. Controlled access highways, 32-2001 to 32-2003, 32-2006 to 32-2008, 32-2008.1, 32-2009, 32-2009.1, 32-2010.
 21. Uniform act regulating traffic on highways, 32-2134.1 to 32-2134.3, 32-2137, 32-2170, 32-2173, 32-2174, 32-2177, 32-2197, 32-2198, 32-21-132, 32-21-143.1 to 32-21-143.4, 32-21-150.1 to 32-21-150.3, 32-21-163, 32-21-164, 32-21-166 to 32-21-175.
 22. Highway code—general provisions, 32-2201 to 32-2203.
 23. Classification of highways, 32-2301, 32-2302.
 24. Assent to federal aid—state highway commission, powers and duties, 32-2401 to 32-2421.
 25. State highway engineer and other employees, 32-2501 to 32-2503.
 26. Distribution and apportionment of highway construction funds, 32-2601 to 32-2611.
 27. Montana toll bridge authority, 32-2701 to 32-2716.
 28. Board of county commissioners responsibility for county roads, 32-2801 to 32-2815.
 29. Board of county commissioners responsibility for bridges and ferries, 32-2901 to 32-2907.
 30. County road superintendent, 32-3001 to 32-3007.
 31. Local improvement districts, 32-3101 to 32-3131.
 32. State vehicle fees—payment, expiration and disposition, 32-3201 to 32-3206.
 33. Additional truck, trailer and bus fees—sales tax on vehicles—excess weight penalties, 32-3301 to 32-3317.
 34. Fees for drive-away or tow-away transporters, 32-3401 to 32-3406.
 35. Bond issues for state toll bridges, 32-3501 to 32-3509.
 36. County tax levies for road and bridge construction, 32-3601 to 32-3605.
 37. Local use of registration and other vehicle fees, 32-3701 to 32-3707.
 38. County road and bridge bonds, 32-3801 to 32-3806.
 39. Acquisition and disposition of property by state, 32-3901 to 32-3920.
 40. Acquisition and disposition of property by county, 32-4001 to 32-4018.
 41. Contracts of state highway commission, 32-4101 to 32-4103.
 42. Contracts of counties and local improvement districts, 32-4201 to 32-4207.
 43. Control of access, 32-4301 to 32-4311.
 44. Good Roads day—obstructions, encroachments and debris on highways, 32-4401 to 32-4410.
 45. Junkyards along roads, 32-4501 to 32-4512.

CHAPTER 1—HIGHWAYS—DEFINITIONS AND CLASSIFICATIONS

32-102 to 32-107. (1611 to 1616) Repealed.

Repeal

These sections (Sec. 10, p. 106, L. 1874; Sec. 2600, Pol. C. 1895; Secs. 1, 3, 6, Ch. 44, L. 1903; Secs. 2 to 7, Ch. 72, L. 1913; Secs. 2 to 7, Ch. 141, L. 1915; Secs. 2 to 7, Ch. 172, L. 1917; Sec. 1, Ch. 247, L. 1959),

relating to definitions and classifications of highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2203, 32-2301, 32-2808, and 32-4014.

CHAPTER 2—ROAD TAXES AND BONDS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-201 to 32-208. (1617 to 1620) Repealed.**Repeal**

These sections (Sec. 19, p. 110, L. 1874; Sec. 1, p. 119, L. 1885; Secs. 1796, 1837, 1838, 5th Div. Comp. Stat. 1887; Secs. 1, 3, p. 176, L. 1897; Sec. 1, p. 69, L. 1899; Secs. 11, 26, 27, Ch. 44, L. 1903; Secs. 1 to 4, Ch. 2, Ch. 72, L. 1913; Secs. 1 to 4, Ch. 2, Ch. 141, L. 1915; Secs. 1 to 4, Ch. 2, Ch.

172, L. 1917; Sec. 1, Ch. 2, L. 1933; Secs. 1 to 4, Ch. 69, L. 1945; Sec. 1, Ch. 145, L. 1947; Sec. 1, Ch. 149, L. 1947), relating to road taxes and bonds, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3601 to 32-3605 and 32-3801.

CHAPTER 3—SUPERVISION OF PUBLIC HIGHWAYS

- Section 32-314. Inspection of highways and construction work—compensation.
 32-317. Designation of emergency area near construction project.
 32-318. Notice of designation of emergency area—removal of designation.
 32-319. Livestock not to run at large in emergency area.
 32-320. Impounding of animals at large—notice to owner—fees and mileage.
 32-321. Penalty for violations.

32-302 to 32-313. (1622 to 1631) Repealed.**Repeal**

These sections (Sec. 12, p. 119, Ex. L. 1873; Sec. 24, p. 113, L. 1874; Sec. 4, p. 118, L. 1885; Secs. 1801, 1802, 1834, 5th Div. Comp. Stat. 1887; Secs. 2632, 2695, 2700, 2701, 2710, 2711, 2720, Pol. C. 1895; Sec. 13, p. 68, L. 1899; Secs. 10, 33 to 36, Ch. 44, L. 1903; Secs. 2 to 11, Ch. 3, Ch. 72, L. 1913; Secs. 2 to 11, Ch. 3, Ch. 141, L. 1915; Secs. 2 to 11, Ch. 3, Ch. 172, L. 1917; Secs. 1 to 3, Ch. 15, Ex. L. 1919; Sec. 1, Ch. 128, L. 1925;

Secs. 1, 2, Ch. 102, L. 1927; Secs. 1, 2, Ch. 21, L. 1929; Sec. 1, Ch. 59, L. 1929; Sec. 1, Ch. 81, L. 1929; Sec. 1, Ch. 179, L. 1931; Sec. 1, Ch. 102, L. 1947; Sec. 1, Ch. 109, L. 1955; Sec. 1, Ch. 128, L. 1959), relating to the functions of county commissioners, county surveyors, and road supervisors with respect to roads, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2801 to 32-3007.

32-314. (1632) Inspection of highways and construction work—compensation. The board of county commissioners may direct the county surveyor or some member or members of said board, to inspect the condition of any highway or highways or proposed highway or any work, contract or otherwise, under the direction, supervision or control of the county officials, being done or completed on any highway or bridge in the county during the progress of the work or before any work is commenced, or after completion and before payment therefor, and such person or persons making such inspection shall receive for making such inspection when so directed the sum of twenty dollars (\$20.00) per day and actual expense, which shall be audited and allowed in the same manner as other claims against the county.

History: Ap. p. Sec. 1805; 5th Div. Comp. Stat. 1887; amd. Secs. 2740-2741, Pol. C. 1895; amd. Secs. 51-52, Ch. 44, L. 1903; amd. Secs. 1-2, Ch. 76, L. 1905; re-en. Secs. 1387-1388, Rev. C. 1907; amd. Secs. 12-13, Ch. 3, Ch. 72, L. 1913; amd. Secs. 12-13, Ch. 3, Ch. 141, L. 1915; amd. Sec. 1, Ch. 106, L. 1917; amd. Sec. 12, Ch. 3, Ch. 172, L. 1917; amd. Sec. 4, Ch. 15,

Ex. L. 1919; re-en. Sec. 1632, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1929; amd. Sec. 1, Ch. 84, L. 1953; amd. Sec. 1, Ch. 116, L. 1957; amd. Sec. 2, Ch. 260, L. 1965.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2805.

Amendment

The 1965 amendment increased the per

diem rate specified near the end of the section from \$15 to \$20.

32-316. (1634) Repealed.**Repeal**

This section (Sec. 2742, Pol. C. 1895; Sec. 53, Ch. 44, L. 1903; Sec. 3, Ch. 76, L. 1905; Sec. 14, Ch. 3, Ch. 72, L. 1913; Sec. 14, Ch. 3, Ch. 141, L. 1915; Sec. 13,

Ch. 3, Ch. 172, L. 1917), relating to records of county commissioners relating to roads, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2805.

32-317. Designation of emergency area near construction project. A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

History: En. Sec. 1, Ch. 118, L. 1963.

Title of Act

An act authorizing a board of county commissioners to designate a portion of a county or state secondary road as emer-

gency area if increased traffic due to a construction project threatens public safety; and prohibiting the running of livestock across the emergency area unless in transit under herd in the custody of an attendant; providing an effective date.

32-318. Notice of designation of emergency area—removal of designation. Notice of such designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for such designation. The board shall post the area or roads affected with adequate signs. The board shall remove the emergency designation within thirty days after the cessation of the increased traffic.

History: En. Sec. 2, Ch. 118, L. 1963.

32-319. Livestock not to run at large in emergency area. A person who owns or has custody of livestock shall not permit the livestock to run upon the emergency area unless the livestock are under herd in transit across the emergency area in the custody of an attendant.

History: En. Sec. 3, Ch. 118, L. 1963.

32-320. Impounding of animals at large—notice to owner—fees and mileage. A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector or deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector and the usual inspection fees and mileage shall be paid by the owner of such livestock.

History: En. Sec. 4, Ch. 118, L. 1963.

32-321. Penalty for violations. A person violating this act is guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars (\$10.00) or more than fifty dollars (\$50.00) for each violation.

History: En. Sec. 5, Ch. 118, L. 1963.

after its passage and approval. Approved March 1, 1963.

Effective Date

Section 6 of Ch. 118, Laws 1963 provided the act should be in effect from and

CHAPTER 4—ESTABLISHING, ALTERING AND VACATING PUBLIC HIGHWAYS

32-401 to 32-413. (1635 to 1647) Repealed.

Repeal

These sections (Secs. 2750, 2751, 2760 to 2763, 2765 to 2768, Pol. C. 1895; Secs. 55, 56, 65 to 68, 70, 72, 73, pages 35, 38, 39, L. 1901; Secs. 54, 55, 63 to 66, 68 to 71, Ch. 44, L. 1903; Secs. 1 to 16, Ch. 4, Ch. 72, L. 1913; Secs. 1 to 16, Ch. 4, Ch. 141, L. 1915; Secs. 1 to 13, Ch. 4, Ch. 172,

L. 1917; Secs. 1, 2, Ch. 4, Ex. L. 1919; Sec. 1, Ch. 107, L. 1935; Sec. 1, Ch. 123, L. 1961), relating to the establishment, alteration and discontinuance of highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-4002 to 32-4013.

32-415, 32-416. (1649, 1650) Repealed.

Repeal

These sections (Secs. 2770, 2771, Pol. C. 1895; Secs. 75, 76, p. 40, L. 1901; Secs. 73, 74, Ch. 44, L. 1903; Secs. 18, 19, Ch. 4, Ch. 72, L. 1913; Secs. 18, 19, Ch. 4, Ch. 141, L. 1915; Secs. 15, 16, Ch. 4, Ch. 172,

L. 1917), relating to the laying out and changing of highways along section or subdivision lines, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4009.

CHAPTER 5—LOCAL IMPROVEMENT DISTRICTS

32-501 to 32-507. (1676 to 1682) Repealed.

Repeal

These sections (Secs. 1 to 7, Ch. 12, Ch. 172, L. 1917), relating to construction and improvement of highways through assess-

ment districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3101 to 32-3107 and 32-3110.

32-509 to 32-526. (1684 to 1701) Repealed.

Repeal

These sections (Secs. 9 to 26, Ch. 12, Ch. 172, L. 1917; Sec. 1, Ch. 13, L. 1925), relating to construction and improvement of highways through local improvement

districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3108 to 32-3131.

CHAPTER 6—SPECIAL ROAD DISTRICTS, ABOLISHMENT

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-601, 32-602. Repealed.

Repeal

These sections (Secs. 1, 3, Ch. 35, L. 1939), abolishing special road districts,

were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 7—PUBLIC BRIDGES

Section 32-711. Bridges to be under control and management of county commissioners—police regulations.

32-701 to 32-710. (1703 to 1712) Repealed.

Repeal

These sections (Secs. 2810 to 2814, Pol. C. 1895; Secs. 75 to 79, Ch. 44, L. 1903; Sec. 1, Ch. 9, L. 1909; Secs. 1 to 5, Ch. 5, Ch. 72, L. 1913; Secs. 1 to 5, Ch. 5, Ch. 141, L. 1915; Secs. 1 to 5, Ch. 63, L. 1917; Sec. 1, Ch. 144, L. 1931; Sec. 1,

Ch. 144, L. 1947; Sec. 1, Ch. 25, L. 1951), relating to county construction and maintenance of bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2901 to 32-2907 and 32-3602 to 32-3604.

32-711. (1713) Bridges to be under control and management of county commissioners—police regulations. All bridges referred to in the foregoing sections shall be under the management and control of the board of county commissioners of the county in which such bridge is situated, and all repairs to and planking and replanking, paving, and repaving thereof shall be done as and when directed by the board of county commissioners; the board of county commissioners may also make repairs to stream beds and watercourses and the banks thereof when such a bridge is in danger of being damaged or lost because of erosion to or changes in the beds or banks of such streams; provided, that such bridges and all persons thereon shall be subject to the reasonable police regulations of the city or town in which any such bridge is situated.

History: En. Sec. 6, Ch. 63, L. 1917; re-en. Sec. 1713, R. C. M. 1921; amd. Sec. 1, Ch. 172, L. 1963.

Amendment

The 1963 amendment inserted the clause authorizing repairs to stream beds and watercourses and the banks thereof.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2905.

32-713 to 32-715. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 106, L. 1955; Secs. 1, 2, Ch. 35, L. 1957), relating to state construction and reconstruction

of bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2604.

CHAPTER 9—CORRUGATED IRON CULVERTS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-901 to 32-905. (1721 to 1725) Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 143, L. 1919), relating to corrugated iron cul-

verts used in road construction, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 10—OBSTRUCTIONS AND ENCROACHMENTS

Section 32-1014. Dumping garbage or refuse upon or near highway or public recreational property.

32-1002 to 32-1010. (1727 to 1735) Repealed.

Repeal

These sections (Secs. 2 to 10, Ch. 6, Ch. 141, L. 1915), relating to encroachments and obstructions on highways, were re-

pealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4403 to 32-4409.

32-1012, 32-1013. (1737, 1738) Repealed.

Repeal

These sections (Secs. 12, 13, Ch. 6, Ch. 141, L. 1915), relating to obstruction of and injuries to highways and trees

along highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-4402 and 32-4404.

32-1014. (1739) Dumping garbage or refuse upon or near highway or public recreational property. (1) It is unlawful for a person to dump or leave garbage:

(a) on or within two hundred yards of a public highway, road, street, or alley or public recreational property, under the control of the state of Montana or department, political subdivision officer, or agent thereof

(b) on privately owned property where hunting, fishing or other recreation is permitted without the permission of the owner or person in possession of such private property.

(2) Any person guilty of a violation of this section shall be fined not more than one hundred dollars (\$100), or imprisoned in the county jail for a period not exceeding thirty (30) days, or be punished by both such fine and imprisonment, in the discretion of the court. The provisions of this section shall be enforced by all state, county and city enforcement agencies and officers. However, the game wardens shall enforce the provisions of this section on public recreational property and on private property where public recreation is permitted.

History: En. Sec. 90, Ch. 44, L. 1903; re-en. Sec. 1434, Rev. C. 1907; re-en. Sec. 14, Ch. 6, Ch. 72, L. 1913; re-en. Sec. 14, Ch. 6, Ch. 141, L. 1915; re-en. Sec. 1739, R. C. M. 1921; amd. Sec. 1, Ch. 237, L. 1959; amd. Sec. 1, Ch. 176, L. 1965. Cal. Pol. C. Sec. 2737.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4410.

Amendment

The 1965 amendment divided the section into numbered subsections; completely re-wrote subsection (1); increased the maximum fine specified in the first sentence of subsection (2) from \$25 to \$100; added "and on private property where public recreation is permitted" at the end of subsection (2); and made several minor changes in phraseology and punctuation. For previous text, see parent volume.

32-1016. (1741) Repealed.

Repeal

This section (Sec. 2734, Pol. C. 1895; Sec. 50, Ch. 44, L. 1903; Sec. 16, Ch. 6, Ch. 72, L. 1913; Sec. 16, Ch. 6, Ch. 141,

L. 1915), relating to prosecution of offenses, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 11—SPEED AND TRAFFIC REGULATIONS

Section 32-1127. Permits for excess size and weight.

32-1131. Disposition of fines.

32-1113. (1748.1) Owner or operator of vehicle released, etc.

Jury Question

The question of gross negligence was properly submitted to the jury on evidence that defendant approached a known 90-degree turn at a speed of 35 to 40 miles per hour on a rough road despite warnings from the plaintiff guest and another passenger to slow down. *Carter v. Miller*, 140 M 426, 372 P 2d 421, 425.

The question of whether the action of a second defendant is an independent inter-

vening cause in one for the jury and their finding will not be disturbed when there is substantial evidence to support it. *Holland v. Konda*, 142 M 536, 385 P 2d 272.

Pleading of Negligence

A general allegation of negligence in the complaint is sufficient to raise the issue of gross negligence. *Carter v. Miller*, 140 M 426, 372 P 2d 421, 424.

32-1115. (1748.3) Imputation of ordinary negligence to guest.

References

Holland v. Konda, 142 M 536, 385 P 2d 272.

32-1127. (1751.6) Permits for excess size and weight. The state highway commission, and local authorities in their respective jurisdiction, may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing, authorizing the applicant to operate or move a vehicle of a size or weight exceeding the maximum specified in this act upon any highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible; provided, however, that only the state highway commission shall have the discretion to issue permits for movement of vehicles carrying built-up or reducible loads in excess of nine (9) feet in width or exceeding the length, height, or weight specified in this act said permit shall be issued in the public interest; provided, however, that any carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. No permit shall be issued for a period of more than nine (9) months.

The applicant for any special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle or load to be operated or moved and the particular state highways over which the vehicle or load is to be moved and whether such permit is required for a single trip or for continuous operation. All fees collected under this act shall be forwarded to the state treasurer for deposit in the state highway general fund.

(a) **Special Permits—Discretion of Issuer—Conditions.** The state highway commission or local authority is authorized to issue or withhold such special permit at its discretion, or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicle described may be operated on the public highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles when necessary to assure against damage to the road foundation, surfaces or structures or safety of traffic and may require such undertaking or other security as may be deemed necessary to compensate for injury to any roadway or road structure.

(b) **Special Permits—Fees.** The following fees, in addition to the regular license and gross vehicle weight fees, shall be paid for all movements under special permits on the public highways under the jurisdiction of the state highway commission:

Three dollars (\$3.00) for each permit issued in excess of the size and weight specified in this act; provided, however, that term or blanket permits shall not be issued for overwidth loads in excess of fifteen (15) feet, overlength loads in excess of seventy (70) feet, and overheight loads in excess of a limit determined by the state highway commission. Loads in excess of these dimensions will be limited to trip permits.

In addition to the three dollar (\$3.00) fee specified herein for overweight permits, there shall be charged for single trip permits: five dollars (\$5.00) for distances to and including one hundred (100) miles; fifteen dollars (\$15.00) for distances from one hundred one (101) to one hundred ninety-nine (199) miles; and twenty-five dollars (\$25.00) for distances over two hundred (200) miles traveled, for such excess load over the gross

allowable load specified in this section or the sum of the excess axle loads, whichever is greater.

(c) **Special Permits—Misrepresentations and Violations—Penalty—Display of Permit.** Any person who knowingly and willfully misrepresents the size or weight of any load in obtaining a special permit or does not follow the requirements and conditions of the special permit or who operates any vehicle, the gross weight of which is in excess of the maximum for which such vehicle may be eligible for license, without first obtaining a special permit, is guilty of a misdemeanor.

Every special permit issued hereunder shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the Montana highway patrol, or employees of the state highway commission.

A peace officer, officer of the Montana highway patrol, or employees of the state highway commission who shall find any person operating a vehicle in violation of the conditions of a special permit issued hereunder may confiscate such permit and forward the same to the state highway commission which may return it to the permittee or revoke, cancel, or suspend it without refund. The state highway commission shall keep a record of all action taken upon permits so confiscated and if a permit shall be returned to the permittee, the action taken by the commission shall be endorsed thereon. Any permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after such hearing, may reinstate any permit or revise its previous action.

History: En. Sec. 6, Ch. 171, L. 1931; amd. Sec. 2, Ch. 147, L. 1933; amd. Sec. 5, Ch. 184, L. 1939; amd. Sec. 1, Ch. 254, L. 1955; amd. Sec. 5, Ch. 243, L. 1961; amd. Sec. 1, Ch. 225, L. 1965.

Amendment

The 1965 amendment substituted "shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle or load" for "shall specifically describe the vehicle or vehicles and load" after "The applicant for any

special permit" at the beginning of the second paragraph; and substituted "over which the vehicle or load is to be moved" for "for which to operate is requested" after "particular state highways" in the first sentence of the second paragraph.

Effective Date

Section 2 of Ch. 225, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

32-1131. (1752) Disposition of fines. Any and all fines collected for the violation of any of the provisions of this act shall belong to the general road fund of the county, and shall, immediately after their collection, be paid over by the court or magistrate collecting the same to the county treasurer for the use and benefit of that fund, except the penalty assessments levied and paid as provided for in section 4 [75-5304] of this act, which the county treasurer shall transmit to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 10, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 10, Ch. 141, L. 1915; re-en. Sec. 1752, R. C. M. 1921; amd. Sec. 12, Ch. 226, L. 1965.

Amendment

The 1965 amendment added the exception at the end of the section commencing with "except the penalty."

Separability Clause

Section 13 of Ch. 226, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect

in all valid applications that are severable from the invalid applications."

Effective Date

Section 14 of Ch. 226, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

CHAPTER 13—GOOD ROADS DAY

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-1301. (1764) Repealed.**Repeal**

This section (Sec. 1, Ch. 20, L. 1915), relating to good roads day, was repealed

by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4401.

CHAPTER 16—STATE HIGHWAY COMMISSION AND HIGHWAY ENGINEER—POWERS AND DUTIES

- Section 32-1601. State highway commission—creation—salary—term of office.
 32-1602. Meetings—engineer—duties.
 32-1615. Rights of way, and other properties, how procured.
 32-1615.2. Description and plan of new or controlled access highway or facility—recording.
 32-1615.3. Buildings and improvements not compensable—with exceptions.
 32-1619. Disposition of state highway moneys.
 32-1626. Lewis and Clark highway—routes comprising.
 32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs.
 32-1628. Bypassing of municipalities—consent of municipal governing body.
 32-1629. Littering highway as misdemeanor—penalty.
 32-1630. Reward for informing on litterbugs.
 32-1631. Posting notice of act.

32-1601. (1783) State highway commission—creation—salary—term of office. (1) to (6). * * * [Same as parent volume.]

(7). * * * [Deleted.]

History: Earlier acts were chapter 170, L. 1917, and chapter 207, L. 1921. This section en. Sec. 1, Ch. 10, Ex. L. 1921; re-en. Sec. 1783, R. C. M. 1921; amd. Sec. 1, Ch. 129, L. 1925; amd. Sec. 1, Ch. 111, L. 1941; amd. Sec. 1, Ch. 86, L. 1945; amd. Sec. 1, Ch. 118, L. 1953; amd. Sec. 17, Ch. 177, L. 1965.

Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2402 to 32-2405.

Amendment

The 1965 amendment deleted a subsection (7) reading, "Each commissioner shall give bond conditioned for the faithful performance of his duties in the sum of ten thousand dollars (\$10,000.00)"; and made a minor change in subsection (4).

Repeal

This section is repealed by Sec. 12-109,

32-1602. (1784) Meetings—engineer—duties. The state highway commission shall meet at least once each month for the purpose of transacting its business, including the consideration of claims and the letting of contracts. Three (3) members shall constitute a quorum at any meeting, but no resolution, motion, or other decision of the commission shall be adopted or passed without the favorable vote of at least three (3) members. The state highway engineer shall perform any acts or duties relating to the office of the highway commission which said commission may, from

time to time, impose upon him; such engineer shall take and file the constitutional oath of office before entering the performance of his duties; and may be removed by the commission at any time for cause.

History: En. Sec. 2, Ch. 10, Ex. L. 1921; re-en. Sec. 1784, R. C. M. 1921; amd. Sec. 2, Ch. 86, L. 1945; amd. Sec. 1, Ch. 117, L. 1953; amd. Sec. 18, Ch. 177, L. 1965.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December

31, 1966. For new law, see secs. 32-2405 and 32-2501.

Amendment

The 1965 amendment deleted "he shall give a bond in such sum as the commission may determine" before "and may be removed" near the end of the section.

32-1603 to 32-1610. (1785 to 1792) Repealed.

Repeal

These sections (Secs. 3 to 10, Ch. 10, Ex. L. 1921; Secs. 3 to 6, Ch. 86, L. 1945; Sec. 1, Ch. 155, L. 1945; Sec. 1, Ch. 91, L. 1955; Sec. 1, Ch. 43, L. 1957; Sec. 1, Ch. 98, L. 1959; Sec. 1, Ch. 124, L. 1961; Sec. 1, Ch. 222, L. 1961), relating

to powers and duties of the state highway commission, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2401, 32-2406 to 32-2412, 32-2502, 32-2503, and 32-4101 to 32-4103.

32-1613, 32-1614. (1795, 1796) Repealed.

Repeal

These sections (Secs. 13, 14, Ch. 10, Ex. L. 1921), relating to conveyances for state highway purposes and to the official road

map, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4016.

32-1615. (1797) Rights of way, and other properties, how procured. The state highway commission shall have the power and authority to lay out, alter, construct, improve and maintain highways in the state of Montana.

Notwithstanding any other provision of law, the state highway commission shall have the power and authority to acquire, by purchase or any other lawful manner, either in fee or in any lesser estate or interest, any lands or other real property, excluding oil, gas and mineral rights, which it deems reasonably necessary for present or future state highway purposes. The acquisition of such lands or real property, or interest therein, for such purposes includes, but is not limited to, that which is deemed reasonably necessary by the state highway commission, for any of the following purposes:

(a) For rights of way, including those necessary for state highways within cities.

(b) For the purposes of exchanging the same for other real property to be used for rights of way or other purposes authorized herein, provided that the same shall not be acquired for such a purpose by condemnation procedures.

(c) For deposits of road building materials for reasonably foreseeable future road building purposes and uses, including rock, gravel, sand or earth; provided however that the right of eminent domain shall not be available for the acquisition of any such deposits of road building materials which may then constitute a component part of an existing private business enterprise.

(d) For offices, weighing stations, shops or storage yards, buildings, rest areas, informational sites or communication facilities.

(e) Parks adjoining or near any state highway, provided that the same shall not be acquired for such a purpose by condemnation procedures.

(f) For the culture and support of trees or shrubs which benefit any state highway by aiding in the maintenance and preservation of the roadbed.

(g) For drainage in connection with any state highway.

(h) For the maintenance of any unobstructed view of any portion of a state highway so as to promote the safety of the traveling public.

(i) For the construction and maintenance of stock lanes or trails.

(j) For the construction and maintenance or replacement of private or public irrigation systems, private or public drainage systems, or natural water or drainage courses made necessary by highway construction.

(k) For providing land or other real property easements or rights of way for necessary relocation of existing utilities, utility easements or other easements for facilities or purposes then in place, or in effect, upon a proposed right of way.

Whenever it shall be deemed necessary by the commission to secure lands or other real property, or rights therein, as herein provided, and the same cannot be acquired by purchase at a price or cost which is deemed reasonable by the commission, the commission may direct the attorney general or any county attorney in any county in the state to procure the lands or other real property by proceedings to be instituted in the manner as provided in sections 93-9901 to 93-9926 against all nonaccepting landholders.

The commission may not so direct the attorney general or any county attorney to procure rights of way, easements, lands or other real property as hereinbefore provided, unless the commission first adopts a resolution declaring that public interest and necessity require the construction or completion by the state, of the highway or improvement, for one of the purposes set forth in this section, and that the rights of way, easements, lands or other real property, or interest therein, described in such resolution and sought to be condemned is necessary for the improvement and that the same is planned and located in a manner which will be most compatible with the greatest public good and the least private injury.

Such resolution of the commission shall create and establish a disputable presumption of the public necessity of such proposed public improvement; that the taking of such rights of way, easements, lands or other real property or interests therein, and the amount thereof, is necessary therefor; and that the proposed public improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

Whenever a part of a parcel of land or other real property is to be taken for state highway purposes and the remainder is to be left in such shape or condition as to be of little market value or to give rise to claims or litigation concerning severance or other damage, the state highway

commission may acquire the whole parcel and sell the remainder or exchange the same for other property needed for state highway purposes.

Whenever a part or parcel of land is taken for state highway purposes in such a shape or size as to come under the provisions set forth in section 11-614, R.C.M. 1947, the highway commission shall prepare and file in the office of the county clerk and recorder of the county in which said land lies, the required plat.

The authority conferred by this chapter to acquire rights of way, easements, lands or other real property and interest therein for state highway purposes includes authority to acquire for reasonably foreseeable future needs. The state highway commission is authorized to lease unused portions of any lands which are held for state highway purposes and interstate rights of way which are not presently needed for highway purposes on such terms and conditions as the state highway commission may fix and to maintain and care for such property in order to secure rent therefrom. All rent so received shall be deposited in the state highway fund.

The acquisition of any right of way or easement by the state highway commission for construction, operation, repair reconstruction, or maintenance of state highways shall include, among other rights, the right to use, remove, relocate, redistribute or otherwise dispose of any and all gravel or other road building materials, found or located within the boundaries of such rights of way or easements and such gravel or materials shall be deemed real property for the purposes of this act.

Whenever a parcel of land is acquired for state highway purposes, as provided for in this act, it shall be the duty of the commission to determine that all property taxes thereon have been paid, and if necessary, to withhold a sufficient amount from the acquisition cost to pay the same.

History: En. Sec. 15, Ch. 10, Ex. L. 1921; re-en. Sec. 1797, R. C. M. 1921; amd. Sec. 1, Ch. 180, L. 1961; amd. Sec. 1, Ch. 91, L. 1963; amd. Sec. 1, Ch. 125, L. 1965.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3902 to 32-3909.

Amendments

The 1963 amendment inserted the fourth paragraph from the end (the paragraph referring to section 11-614).

The 1965 amendment added the last paragraph and made a minor change in punctuation.

Market Value of Condemned Land

Where highway commission condemned land for purposes of gaining an easement for the construction and maintenance of a state highway, and not for obtaining a deposit of gravel, sand, and other materials on the land, testimony as to the value of such materials was inadmissible

as speculative, remote and conjectural and not within the purpose of subsection (c) of this section. *State Highway Commission v. Mott*, 142 M 402, 384 P 2d 922.

Railroad Right of Way

Subsection (k) of this section permits the state to condemn land in order to provide right of way for a railroad being moved to allow construction of public highways. *State ex rel. DePuy v. District Court*, 142 M 328, 384 P 2d 501.

Rental of Unused Right of Way

The 1961 amendment of this section so as to give express authority for the rental of unused right of way rendered moot a taxpayers' action to restrain the highway commission from granting an encroachment permit, where there was no indication that the permit, when granted, would violate the terms of the statutory amendment. *Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 488.

Transfer of Land

Any manner of transferring unused

highway right of way which is inconsistent with this section is by implication excluded. *Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 488.

The state highway commission cannot give away or loan gratuitously the use of an unused highway right of way. *Wilson*

v. State Highway Commission, 140 M 253, 370 P 2d 486, 488.

References

State Highway Commission v. Yost Farm Co., 142 M 239, 384 P 2d 277.

32-1615.1. Repealed.

Repeal

This section (Sec. 1, Ch. 182, L. 1961), relating to irrigable lands rendered unusable by highway construction, was re-

pealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-3916.

32-1615.2. Description and plan of new or controlled access highway or facility—recording. Whenever the state highway commission shall definitely establish the location, width and lines of any new or proposed highway, or declare any road, street or highway, as a controlled access facility, it shall cause the description and plan of any such highway or facility to be made, showing the center line of said highway and the established width thereof and attach thereto a certified copy of the resolution of the state highway commission establishing such location, and thereupon such description, plan and resolution shall be recorded in the office of the county clerk and recorder of the proper county in a separate book kept for such purposes, which shall be furnished to the county clerk and recorder of such county by the state highway commission at the expense of the state.

History: En. Sec. 1, Ch. 143, L. 1963.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2413.

Title of Act

An act to authorize the recording of locations of new highways or controlled

access facilities by the state highway commission; providing that improvements, buildings or subdivisions placed upon said lands within the limits of such location may not be taken into consideration for the purpose of assessing compensation for such lands; repealing all acts or parts of acts in conflict herewith; and providing that this act shall be effective from the date of its passage and approval.

32-1615.3. Buildings and improvements not compensable—with exceptions. No consideration, allowance or assessment of values or compensation shall be had in the purchase or condemnation of any buildings or improvements or subdivisions thereafter made upon the above described lands placed or erected within the limits of any such highway or facility, the location, width and lines of which have been established and recorded; provided, that the establishment of any highway location as set forth in section (1) [32-1615.2] hereof shall be ineffective after one year from the filing thereof if no action to condemn or acquire the property within said limits has been commenced within said time. This act shall not apply to crops or similar improvements planted on such lands. Such improvements shall be governed by section 93-9913, Revised Codes of Montana for 1947.

History: En. Sec. 2, Ch. 143, L. 1963.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-3908.

Repealing Clause

Section 3 of Ch. 143, Laws 1963 repealed all acts or parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 143, Laws 1963 provided the act should be in effect from and

after its passage and approval. Approved March 2, 1963.

32-1616 to 32-1618. (1798) Repealed.**Repeal**

These sections (Sec. 16, Ch. 10, Ex. L. 1921; Secs. 1, 2, Ch. 92, L. 1939; Sec. 1, Ch. 210, L. 1959), relating to sale of property by the highway commission and

to prosecution of violations of the highway laws, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2418 and 32-3910 to 32-3915.

32-1619. (1799) Disposition of state highway moneys. All moneys received for the use and purpose of the state highway commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the state highway commission. Any reference to the state highway fund in this code shall be taken to mean the state highway account in the earmarked revenue fund. All moneys received from the counties, and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the state highway commission. Hereafter all moneys collected for the state highway commission as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 17, Ch. 10, Ex. L. 1921; re-en. Sec. 1799, R. C. M. 1921; amd. Sec. 212, Ch. 147, L. 1963.

Amendment

The 1963 amendment substantially re-wrote this section. For previous text, see parent volume.

32-1620. (1800) Repealed.**Repeal**

This section (Sec. 18, Ch. 10, Ex. L. 1921; Sec. 7, Ch. 86, L. 1945; Sec. 18, Ch. 97, L. 1961), relating to claims against

the state highway commission, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2417.

32-1622 to 32-1625. Repealed.**Repeal**

These sections (Sec. 1, Ch. 15, L. 1955; Secs. 1, 2, Ch. 30, L. 1955; Sec. 1, Ch. 254, L. 1957), relating to highway testing and

to federal aid highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2411 and 32-2414 to 32-2416.

32-1626. Lewis and Clark highway—routes comprising. There is hereby established the Lewis and Clark highway, which shall be composed of the following existing routes: Beginning at the Idaho state line west of Lolo Hot Springs, Montana, to the junction of highway ninety-three (93) at Lolo, Montana; thence to Missoula, Montana, on highway ninety-three (93); thence east from Missoula, Montana, on highway twelve (12) and ten (10) to Garrison, Montana; thence from Garrison, Montana, following the route of highway twelve (12) through Forsyth and Baker, Montana, to the North Dakota state line.

History: En. Sec. 1, Ch. 204, L. 1961; amd. Sec. 1, Ch. 219, L. 1963.

Amendment

The 1963 amendment added that part east of the junction of highway 93 at Lolo.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2302.

Repealing Clause

Section 2 of Ch. 219, Laws 1963 repealed all acts and parts of acts in conflict therewith.

32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs. (1) Except as provided in subsection (2) of this section, the state highway commission shall pay the entire costs of construction and maintenance of streets and highways which:

(a) Are state highway routes; and

(b) Are within municipalities incorporated prior to January 1, 1965.

(2) An incorporated municipality shall pay one-half ($\frac{1}{2}$) of the state's share of the cost of curbs and gutters along such streets and highways.

History: En. Sec. 1, Ch. 210, L. 1965. maintenance of certain streets and highways in or near incorporated municipalities.

Title of Act An act relating to construction and

32-1628. Bypassing of municipalities—consent of municipal governing body. (1) The highway commission shall not construct highway bypasses or highway relocation projects without prior consent of the governing body of an incorporated municipality when the bypasses or projects:

(a) Are not part of the national system of interstate highways built under the national defense highway act; and

(b) Divert motor vehicles from an existing highway route through a municipality incorporated prior to January 1, 1965.

(2) The highway commission shall notify the governing body of such municipality by certified mail that they propose to bypass the municipality. No contract shall be let nor work commenced until the governing body notifies the commission of its consent, or until the elapse of sixty (60) days after the notice has been sent by the highway commission to such municipality, whichever first occurs. The failure of such municipality to act and notify the highway commission of its action within such sixty (60) day period shall constitute implied consent to the bypass.

(3) Actual consent or refusal to bypass shall be in the form of a resolution, duly adopted by a majority of the members of the governing body of the municipality.

(4) The governing body may not withdraw consent once the highway commission has been notified of such consent.

(5) Nothing contained in this act shall in any way modify the provisions of section 32-1625, R. C. M. 1947.

History: En. Sec. 2, Ch. 210, L. 1965. vided the act should be in effect from and after its passage and approval. Approved March 6, 1965.

Effective Date

Section 3 of Ch. 210, Laws, 1965 pro-

32-1629. Littering highway as misdemeanor—penalty. Any person who throws, dumps, deposits or causes to be deposited, any garbage, refuse, waste or litter on the right of way of any state highway or interstate highway, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of two hundred fifty dollars (\$250) or by imprisonment in the county jail for a period not exceeding thirty (30) days, or both such fine and imprisonment in the discretion of the court.

History: En. Sec. 1, Ch. 128, L. 1965.

Title of Act

An act making it unlawful to throw, dump, deposit or cause to be deposited,

any garbage, refuse, waste or litter on the right of way of any state, interstate, or secondary highway; providing for a penalty, reward and a repealing clause.

32-1630. Reward for informing on litterbugs. Upon a conviction under the provisions of this act, any person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person shall be paid a reward from the state general fund in the sum of one hundred dollars (\$100).

History: En. Sec. 2, Ch. 128, L. 1965.

32-1631. Posting notice of act. It is the duty of the state highway commission to post notices of this act, and the penalties provided for, on the state and interstate highways at locations to be designated by the state highway commission.

History: En. Sec. 3, Ch. 128, L. 1965.

Repealing Clause

Section 4 of Ch. 128, Laws 1965 re-

pealed all acts and parts of acts in conflict therewith.

CHAPTER 18—STOCK LANE LAW

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-1801 to 32-1804. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 63, L. 1939), the Stock Lane Law, were repealed

by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4015.

CHAPTER 19—MONTANA TOLL BRIDGE AUTHORITY

Section 32-1905. Bond issues, nature, maturity, interest, contents—registration—sale.

32-1901 to 32-1904. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 31, L. 1953), relating to the state toll bridge authority and the location of toll bridges,

were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2701 to 32-2706.

32-1905. Bond issues, nature, maturity, interest, contents—registration—sale. (1). * * * [Same as parent volume.]

(2) All bonds issued under this act shall contain a statement on the face thereof that the state shall not be obligated to pay the same or the interest thereon except from the special fund hereinafter provided for. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes with the same effect as though they had remained in office until such delivery. All such bonds shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities. [Effective January 1, 1965.]

(3) to (5). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 31, L. 1953; amd. Sec. 11-117, Ch. 264, L. 1963.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3501 to 32-3503.

Amendment

The 1963 amendment substituted "fully negotiable, as provided by the Uniform Commercial Code—Investment Securities" at the end of subsection (2) for "negotiable instruments and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state."

32-1906 to 32-1915. Repealed.

Repeal

These sections (Secs. 6 to 15, Ch. 31, L. 1953), relating to toll bridge financing and right of way acquisition, were repealed by

Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2707 to 32-2716, 32-3504 to 32-3509, and 32-3919.

CHAPTER 20—CONTROLLED ACCESS HIGHWAYS

- Section 32-2001. Purpose.
 32-2002. Definitions.
 32-2003. Designation as controlled access highway—resolution—findings.
 32-2006. Acquisition of property for facility.
 32-2007. New and existing facilities—grade crossing eliminations.
 32-2008. Existing roads and streets as service roads.
 32-2008.1. Maintenance of frontage roads.
 32-2009. Marking of facility with signs.
 32-2009.1. Commercial enterprise or structure.
 32-2010. Violations specified—penalty.

32-2001. Purpose. It is the declared policy of this state to facilitate the flow of traffic and promote public safety by controlling access to highways included by the bureau of public roads in the national system of interstate highways and to throughways and intersections with throughways.

History: En. Sec. 1, Ch. 104, L. 1955; amd. Sec. 1, Ch. 156, L. 1963.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4301.

Amendment

The 1963 amendment added "and to throughways and intersections with throughways" at the end of the section.

Judicial Determination of Necessity

In adopting this chapter the legislature is presumed to have considered sections 93-9905 and 93-9911, R. C. M. 1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. *State Highway Commission v. Yost Farm Co.*, 142 M 239, 384 P 2d 277.

32-2002. Definitions. When used in this act:

(a) "Interstate highway" means any highway now included or which shall hereafter be included as a part of the National System of Interstate Highways.

(b) "Controlled access highway" means all portions of any interstate highway, throughway or public road or street within a throughway intersection area which the state highway commission shall determine and designate for through traffic, over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air or view, by reason of the fact that

the property abuts upon such road, street or highway, or for any other reason, and shall further include those portions of spurs to the interstate highway system which the state highway commission shall determine and designate as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(c) "Controlled access facility" means and includes all streets, alleys, public roads, private roads and ways of passage intersecting any controlled access highway and all real property contiguous to the right of way of any controlled access highway.

(d) "Existing highway" means and includes all highways, roads and streets heretofore established, constructed and in use. It shall not include new highways, roads or streets, or relocated highways, roads or streets, or portions of existing highways, roads or streets which are relocated.

(e) "Arterial highway" means any state highway designated by agreement between the state highway commission and the secretary of commerce as a part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(f) "Throughway" means any portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(g) "Throughway intersection area" means an area within a three hundred foot (300') radius from the point of intersection of the center lines of a throughway and any public road, street or highway.

(h) "Frontage road" for the purpose of this act, shall mean a local road as an integral part of the interstate system necessary and required for control of access and service to abutting property affected by said highway and designated as such by the state highway commission of the state of Montana.

History: En. Sec. 2, Ch. 104, L. 1955; amd. Sec. 1, Ch. 121, L. 1957; amd. Sec. 2, Ch. 156, L. 1963; amd. Sec. 2, Ch. 90, L. 1965.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4302.

Amendments

The 1963 amendment inserted "throughway or public road or street within a throughway intersection area" near the beginning of paragraph (b); inserted "road, street or" after "property abuts upon such" in paragraph (b); made minor changes in phraseology in paragraph (b); and added paragraphs (e), (f), and (g).

The 1965 amendment added paragraph (h).

32-2003. Designation as controlled access highway—resolution—findings. No part or portion of any interstate highway, throughway, or of any public road, street or highway within a throughway intersection area shall be designated as a controlled access highway unless the state highway commission shall, by resolution adopted by the majority vote of the members in attendance at any regular or special meeting thereof, find and determine that it is necessary and/or desirable that the owners or occupants of the abutting land or other persons have no easement of access or only a limited easement of access, light, air or view by reason of the fact that their property abuts upon such highway or for any other reason:

It is hereby declared that the requirement by the federal government that access be controlled may be a basis of necessity for the passing of such resolution by the highway authorities; nor shall any part or portion of any interstate, or spurs to the interstate highway system or of any throughway or of any public road, street or highway within a throughway intersection area be designated as a controlled access highway unless the state highway commission shall, by resolution adopted by the majority vote of the members in attendance at any regular or special meeting thereof, find and determine that it is necessary and/or desirable that the rights of, or easements to access, light, air or view be acquired by the state so as to prevent such part or portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage: provided further that no portion of a throughway or public road, street or highway within a throughway intersection area shall be designated a controlled access highway except upon petition in writing of the governing body of any incorporated city or town within which corporate limits such area, or any part thereof, may be located, nor if such area lies wholly or partially without any such corporate limits, except upon the petition of the board of commissioners of the county within the boundaries of which such area may be located; any such petition to be filed with the state highway commission and, once filed, to be irrevocable except upon concurrence of the state highway commission. Such resolution shall contain a statement of the reasons for the adoption thereof, and shall set forth the location, distance and termini of the portion of the highway designated as a controlled access highway.

History: En. Sec. 3, Ch. 104, L. 1955; amd. Sec. 2, Ch. 121, L. 1957; amd. Sec. 3, Ch. 156, L. 1963.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-4303 and 32-4304.

Amendment

The 1963 amendment substituted "any interstate highway, throughway, or of any public road, street or highway within a

throughway intersection area" near the beginning of the section for "an interstate highway"; substituted "may be a basis of necessity" for "is necessity" in the second sentence; inserted "or of any throughway or of any public road, street or highway within a throughway intersection area" after "spurs to the interstate highway system" in the second sentence; and added the proviso at the end of the second sentence.

References

State Highway Commission v. Yost Farm Co., 142 M 239, 384 P 2d 277.

32-2004, 32-2005. Repealed.

Repeal

These sections (Secs. 4, 5, Ch. 104, L. 1955; Sec. 3, Ch. 121, L. 1957), relating to establishment, alteration, and design of

controlled access facilities, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-4305 and 32-4306.

32-2006. Acquisition of property for facility. For the purpose of this act, the highway authorities of the state, counties, incorporated cities and towns, respectively, or in co-operation one with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads including rights of access, air, view, and light, by gift, devise, purchase, or condemnation, in the same manner as such authorities are now or hereafter may be author-

ized by law to acquire property or property rights in connection with highways and streets within their respective jurisdictions. A right of way is hereby given, dedicated and set apart for controlled access highways or controlled access facilities through, over, upon or across any county road and any street or alley intersecting a controlled access highway and the acquisition of any such county road, street, or alley for use as a controlled access highway or controlled access facility shall be deemed superior and a more necessary public use and purpose than the public use or purpose to which such road, street or alley has theretofore been dedicated.

History: En. Sec. 6, Ch. 104, L. 1955; amd. Sec. 4, Ch. 156, L. 1963.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3920 and 32-4018.

Amendment

The 1963 amendment inserted "controlled access highway(s) or" before "controlled access facility(ies)" once in the first sentence and twice in the second sentence.

Cross-Reference

Filing of location of controlled access facility and limit on condemnation award, secs. 32-1615.2, 32-1615.3.

Judicial Determination of Necessity

In adopting this section the legislature is presumed to have considered sections 93-9905 and 93-9911, R. C. M. 1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. *State Highway Commission v. Yost Farm Co.*, 142 M 239, 384 P 2d 277.

32-2007. New and existing facilities—grade crossing eliminations. The state or any of its subdivisions shall have authority to provide for the elimination of intersections at grade of controlled access highways or of controlled access facilities with existing state and county roads, and city or town streets at the right of way boundary line of such controlled access highway or facility; and after the establishment of any controlled access highway or facility, no private or public highway or street which is not a part of said facility shall intersect the same at grade. No incorporated city or town street, county or state highway, or other public way shall be opened into or connected with any such controlled access highway or controlled access facility without the consent and previous approval of the highway authority in the state, county, incorporated city or town having jurisdiction over such controlled access highway or controlled access facility. Provided, however, that the state highway commission may, whenever it determines that traffic is not thereby impeded and that public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled access highways in sparsely populated rural areas; and provided further that, as to interstate highways and throughways, the state highway commission shall have the sole jurisdiction to determine the existence and location of any intersection therewith.

History: En. Sec. 7, Ch. 104, L. 1955; amd. Sec. 5, Ch. 156, L. 1963.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4307.

Amendment

The 1963 amendment inserted "of controlled access highways or" after "intersections at grade" near the beginning of the section; inserted "highway or" between "controlled access" and "facility" in two places; inserted "private or public"

before "highway or street" near the end of the first sentence; inserted "controlled access highway or" before "controlled access facility" in two places in the second sen-

tence; inserted "state highway" before "commission" near the beginning of the third sentence; and added the final proviso to the section.

32-2008. Existing roads and streets as service roads. In connection with the development of any controlled access highway or controlled access facility the state, county, or incorporated city or town highway authorities are authorized to plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets or to designate as local service roads and streets any existing road or street, and to exercise jurisdiction over service roads in the same manner as is authorized over controlled access highways or controlled access facilities under the terms of this act, whenever such local service roads are necessary for carrying out any of the provisions of this act. Such local service roads or streets shall be of appropriate design, and shall be separated from the controlled access highway or controlled access facility by means of all devices determined to be necessary in carrying out the provisions of this act.

History: En. Sec. 8, Ch. 104, L. 1955; amd. Sec. 6, Ch. 156, L. 1963.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4308.

Amendment

The 1963 amendment inserted "controlled access highway(s) or" before "controlled access facility(ies)" twice in the first sentence and once in the second sentence.

32-2008.1. Maintenance of frontage roads. All frontage roads shall be maintained by the state highway commission of the state of Montana.

History: En. Sec. 1, Ch. 90, L. 1965.

frontage roads and amending section 32-2002 to define "frontage road."

Title of Act

An act to provide for maintenance of

32-2009. Marking of facility with signs. After the opening of any new and additional controlled access highway or controlled access facility or after the designation and establishment of any existing street or highway as included, the particular highways and streets or those portions thereof designated and established shall be physically marked and indicated by the erection and maintenance of signs indicating to drivers of vehicles that they are entering a controlled access area and that they are leaving a controlled access area.

History: En. Sec. 9, Ch. 104, L. 1955; amd. Sec. 7, Ch. 156, L. 1963.

Amendment

The 1963 amendment inserted "controlled access highway or" near the beginning of the section; and made a minor change in punctuation.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4309.

32-2009.1. Commercial enterprise or structure. No commercial enterprise or structure can be constructed or operated on the publicly-owned right of way of, or on any publicly-owned or publicly-leased land used for, or in connection with a controlled access highway or controlled access facility.

History: En. 32-2009.1 by Sec. 1, Ch. 134, L. 1959; amd. Sec. 8, Ch. 156, L. 1963.

Amendment

The 1963 amendment inserted "controlled access highway or" near the end of the section.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4310.

32-2010. Violations specified—penalty. After the opening of any new and additional controlled access highway or facility or after the designation and establishment of any existing street or highway as included therein, it shall be unlawful for any person (1) to drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line on controlled access highways or facilities; (2) to make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line; (3) to drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line; (4) to drive any vehicle into the controlled access highway or facility from a local service road except through an opening provided for that purpose in the dividing curb, or dividing section, or dividing line which separates such service road from the controlled access highway or facility proper; or (5) to construct, operate or maintain any road or private driveway connecting with a controlled access highway or controlled access facility without first obtaining permission in writing from the state highway commission and, except in the case of an interstate highway, from the local governing body having jurisdiction over such highway or facility. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon arrest and conviction therefor shall be punished by a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00), or by imprisonment in the city or county jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 10, Ch. 104, L. 1955; amd. Sec. 9, Ch. 156, L. 1963.

the first sentence; added clause (5) to the first sentence; and made a minor change in phraseology.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4311.

Amendment

The 1963 amendment inserted "or" between "controlled access highway" and "facility" near the beginning of the section; inserted "highway(s) or" between "controlled access" and "facility(ies)" once in clause (1) and twice in clause (4) of

Repealing Clause

Section 10 of Ch. 156, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 156, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

CHAPTER 21—UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

- Section 32-2134.1. Injury to or removal of sign or marker as misdemeanor—penalty.
 32-2134.2. Reward for information on injury to or removal of sign or marker.
 32-2134.3. Posting of act along highways.
 32-2137. Traffic-control signal legend.
 32-2170. Vehicle approaching or entering intersection.
 32-2173. Vehicle entering highway from private road, driveway or public approach ramp.
 32-2174. Vehicles approaching "Yield" sign.
 32-2177. Pedestrians' right of way in crosswalk.
 32-2197. Overtaking and passing school bus.
 32-2198. Special lighting equipment on school buses.
 32-21-132. Audible and visual signals on vehicles.
 32-21-143.1. Brake equipment required.
 32-21-143.2. Performance ability of brakes.
 32-21-143.3. Maintenance of brakes.
 32-21-143.4. Hydraulic brake fluid.
 32-21-150.1. Seat belts required in new vehicles.
 32-21-150.2. Specifications for seat belts.
 32-21-150.3. Penalty for seat belt violations.
 32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when.
 32-21-164. Summons—issuing to child under eighteen.
 32-21-166. Vehicle equipment safety compact—text.
 32-21-167. Legislative findings on equipment safety.
 32-21-168. Equipment requirements continued in force.
 32-21-169. State commissioner on vehicle equipment safety commission.
 32-21-170. Retirement of equipment safety commission employees.
 32-21-171. Governmental agencies to co-operate with equipment safety commission.
 32-21-172. Documents filed and notices given by equipment safety commission.
 32-21-173. Equipment safety commission budgets.
 32-21-174. Equipment safety commission accounts.
 32-21-175. Governor as executive head for compact purposes.

32-2115. Intersection.**Nature of Roads Forming Intersection**

An intersection is formed when two publicly maintained ways join at any

angle. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313.

32-2134.1. Injury to or removal of sign or marker as misdemeanor—penalty. Every person who maliciously injures, defaces, damages or removes any sign, signal or marker, either temporarily or permanently erected on the right of way of any secondary, state or interstate highway for warning, instruction or information of the public, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of two hundred fifty dollars (\$250) or by imprisonment in the county jail for a period not exceeding sixty (60) days, or both such fine and imprisonment in the discretion of the court. This act applies to secondary, state or interstate highways which are completed and to secondary, state or interstate highways which are under construction or repair.

History: En. Sec. 1, Ch. 184, L. 1965.

Title of Act

An act making it unlawful to damage, deface or remove any sign, signal or marker erected on the right of way of any

secondary, state or interstate highway; requiring the state highway commission to post notices hereof; providing for a penalty, reward and a repealing clause.

32-2134.2. Reward for information on injury to or removal of sign or marker. Upon conviction under the provisions of this act, any person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person shall be paid a reward from the state highway account in the earmarked revenue fund in the sum of one hundred dollars (\$100).

History: En. Sec. 2, Ch. 184, L. 1965.

32-2134.3. Posting of act along highways. It is the duty of the state highway commission to post notices of this act, and the penalties provided for, at locations to be designated by the state highway commission.

History: En. Sec. 3, Ch. 184, L. 1965. all acts and parts of acts in conflict therewith.

Repealing Clause

Section 4 of Ch. 184, Laws 1965 repealed

32-2137. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) to (d). * * * [Same as parent volume.]

(e) Red with Traffic Sign Legend—Right Turn on Red After Stop:

1. Vehicular traffic facing such signal and legend shall stop and then may cautiously enter the intersection only to make the turn indicated by the legend but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

2. No pedestrian facing such signal and legend shall enter the roadway until the green or "Go" is shown alone.

(f) Traffic Control Signal at Place Other Than Intersection:

1. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

2. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

History: En. Sec. 34, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 211, L. 1963.

Amendment

The 1963 amendment inserted a new subsection (e) and redesignated former subsection (e) as (f).

32-2151. Drive on right side of roadway—exceptions.

Backing over Center-line

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into decedent's traffic lane, defendant's driver was negligent as a matter of law. Hurly

v. Star Transfer Co., 141 M 176, 376 P 2d 504, 507.

References

Williams v. Wallace, 143 M 11, 386 P 2d 744.

32-2152. Passing vehicles proceeding in opposite directions.

References

141 M 176, 376 P 2d 504, 507; Williams v. Wallace, 143 M 11, 386 P 2d 744.

Cited in Hurly v. Star Transfer Co.,

32-2156. Further limitations on driving to left of center, etc.**Contributory Negligence**

Plaintiff driving to the left side of the roadway while within one hundred feet of or traversing an intersection in attempting to pass truck was guilty of contributory negligence in collision with truck attempting to make a left turn. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313.

Intersection

An intersection is formed when two publicly maintained ways join at any angle. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313.

32-2159. Driving on roadways laned for traffic.**Backing over Center-line**

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into

decendent's traffic lane, defendant's driver was negligent as a matter of law. *Hurly v. Star Transfer Co.*, 141 M 176, 376 P 2d 504, 507.

32-2167. Turning movements and required signals.**Knowledge of Safety Not Required**

This section requires that a person making a turning movement take reasonable precautions under the circumstances, but it does not require that such person

know with absolute certainty that the turning movement can be made with safety. *Holland v. Konda*, 142 M 536, 385 P 2d 272.

32-2170. Vehicle approaching or entering intersection. (a) When two (2) vehicles enter or approach an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(b) The right of way rule declared in paragraph (a) is modified at through highways and otherwise as hereinafter stated in this article.

History: En. Sec. 67, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1965.

Amendment

The 1965 amendment deleted a former paragraph (a), for text of which see parent volume; appropriately redesignated the remaining paragraphs; inserted "or approach" after "enter" near the be-

ginning of present paragraph (a); and deleted from present paragraph (b) a reference to former paragraph (a).

Repealing Clause

Section 2 of Ch. 175, Laws 1965 repealed all acts and parts of acts in conflict therewith.

32-2173. Vehicle entering highway from private road, driveway or public approach ramp. The driver of a vehicle about to enter or cross a highway from a private road, driveway or public approach ramp shall yield the right of way to all vehicles approaching on said highway.

History: En. Sec. 70, Ch. 263, L. 1955; amd. Sec. 1, Ch. 52, L. 1965.

Amendment

The 1965 amendment inserted "or public approach ramp."

32-2174. Vehicles approaching "Yield" sign. When the intersection is designated by the commission, or the local authority having jurisdiction, as a "Yield" intersection, the driver of a vehicle approaching the "Yield" sign shall slow to a speed of not more than fifteen (15) miles per hour and yield right of way to all vehicles approaching from the right or left on the intersecting roads, or streets, which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield"

sign, such collision or interference shall be deemed evidence of the driver's failure to yield right of way.

History: En. Sec. 71, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 96, L. 1963.

Amendment

The 1963 amendment deleted "Right of Way" following "Yield" within the quotation marks in three places.

Effective Date

Section 2 of Ch. 96, Laws 1963 provided the act should be in effect after its passage and approval. Approved February 28, 1963.

32-2177. Pedestrians' right of way in crosswalk. (a) and (b). * * *
[Same as parent volume.]

(c) It is unlawful for any person to drive a motor vehicle through a column of school children crossing a street or highway or past a member of the school safety patrol while the member of the school safety patrol is directing the movement of children across a street or highway and while the school safety patrol member is holding his official signal in the stop position.

History: En. Sec. 74, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 54, L. 1965.

all acts and parts of acts in conflict therewith.

Amendment

The 1965 amendment added subsection (c).

Effective Date

Section 3 of Ch. 54, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

Repealing Clause

Section 2 of Ch. 54, Laws 1965 repealed

32-2197. Overtaking and passing school bus. (a) The driver of a vehicle upon a highway outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which has stopped or is preparing to stop on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said bus a visual signal as specified in section 32-21-132 and said driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed as the visual signals are no longer actuated.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than eight (8) inches in height, and in addition shall be equipped with visual signals meeting the requirements of section 32-21-132. Amber flashing lights shall be actuated by the driver approximately one hundred and fifty (150) feet in cities, and approximately five hundred (500) feet in other areas before the bus is stopped to receive or discharge school children. Red lights shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

(c) and (d). * * * [Same as parent volume.]

History: En. Sec. 94, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 100, L. 1961; amd. Sec. 2,
Ch. 250, L. 1965.

Amendment

The 1965 amendment inserted "or is preparing to stop" after "which has

stopped" in subsection (a); divided subsection (b) into the present first and third sentences of subsection (b); inserted the second sentence in subsection (b); and substituted "Red lights" for "which" at the beginning of the third sentence of subsection (b).

32-2198. Special lighting equipment on school buses. It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: En. Sec. 95, Ch. 263, L. 1955; amd. Sec. 3, Ch. 250, L. 1965.

Amendment

The 1965 amendment inserted "is preparing to stop or" before "is stopped."

32-21-132. Audible and visual signals on vehicles. (a) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with a siren, exhaust whistle or bell capable of giving an audible signal.

(b) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two (2) alternately flashing red lights located at the same level and to the rear two (2) alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight.

(c) Every bus used for the transportation of school children shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two (2) red and two (2) amber alternating flashing lights and to the rear two (2) red and two (2) amber alternating flashing lights. These lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight. The warning lights shall be of a type, and located on each bus, as prescribed by the state board of education and approved by the supervisor of the highway patrol.

(d) A police vehicle when used as an authorized emergency vehicle may but need not be equipped with alternately flashing red lights specified herein. The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in sections 32-2175 and 32-2197.

History: En. Sec. 129, Ch. 263, L. 1955; amd. Sec. 1, Ch. 40, L. 1959; amd. Sec. 1, Ch. 250, L. 1965.

Amendment

The 1965 amendment deleted "Every bus used for the transportation of school children and" at the beginning of subsection (b); inserted a new subsection (c); and redesignated former subsection (c) as (d).

32-21-143. Repealed.

Repeal

This section (Sec. 140, Ch. 263, L. 1955; Sec. 1, Ch. 81, L. 1957) relating to brakes

required on vehicles, was repealed by Sec. 5, Ch. 139, Laws 1965.

32-21-143.1. Brake equipment required. Every motor vehicle, trailer, semitrailer and pole trailer, and any combination of such vehicles operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this chapter.

(a) Service brakes—adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in sections 32-2102 (h) and 53-639, R. C. M., 1947, shall be equipped with service brakes complying with the performance requirements of section 2 [32-21-143.2] of this act and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(b) Parking brakes—adequacy. Every such vehicle and combination of vehicles, except motorcycles and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(c) Brakes on all wheels. Every vehicle shall be equipped with brakes acting on all wheels except:

1. Trailers, semitrailers, pole trailers of a gross weight not exceeding three thousand (3,000) pounds, provided that:

a. The total weight on and including the wheels of the trailer or trailers shall not exceed forty per cent (40%) of the gross weight of the towing vehicle when connected to the trailer or trailers, and

b. The combination of vehicles, consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

2. Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

3. Trucks and truck-tractors having three (3) or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck-tractors must be

capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

4. Special mobile equipment as defined in section 32-2102 (h) and 53-639, R. C. M., 1947.

5. The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes, provided that such motorcycle or motor-driven cycle is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

(d) Automatic trailer brake application upon breakaway. Every trailer, semitrailer and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer and pole trailer with a gross weight in excess of three thousand (3,000) pounds, manufactured or assembled after January 1, 1966, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen (15) minutes, upon breakaway from the towing vehicle.

(e) Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1966, and used to tow a trailer, semitrailer or pole trailer equipped with brakes, shall be equipped with means for providing that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(f) Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1966, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(g) Two means of emergency brake operation. 1. Air brakes. After January 1, 1966, every towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, shall be equipped with two (2) means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall be not lower than twenty (20) pounds per square inch nor higher than forty-five (45) pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

2. Vacuum brakes. After January 1, 1966, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by subsection (h), a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other

pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(h) Single control to operate all brakes. After January 1, 1966, every motor vehicle, trailer, semitrailer and pole trailer, and every combination of such vehicles, except motorcycles and motor-driven cycles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

(i) Reservoir capacity and check valve. 1. Air brakes. Every bus, truck or truck-tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut-out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty per cent (20%). Each reservoir shall be provided with means for readily draining accumulated oil or water.

2. Vacuum brakes. After January 1, 1966, every truck with three (3) or more axles equipped with vacuum assistor type brakes and every truck-tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty per cent (40%).

3. Reservoir safeguarded. All motor vehicles, trailers, semitrailers and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(j) Warning devices. 1. Air brakes. Every bus, truck or truck-tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below fifty per cent (50%) of the air compressor governor cut-out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

2. Vacuum brakes. After January 1, 1966, every truck-tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three (3) or more axles using vacuum in the opera-

tion of its brakes, except those in driveway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than eight (8) inches of mercury.

3. Combination of warning devices. When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

History: En. Sec. 1, Ch. 139, L. 1965.

Title of Act

An act to establish uniform and modern regulations relating to brakes on vehicles; requiring brakes on all vehicles and specifying exceptions thereto; requiring vehicles to be equipped with both service and parking brakes; establishing perform-

ance ability of brakes; defining hydraulic brake fluid; authorizing patrol board to adopt brake fluid standards and specifications; prohibiting the sale of brake fluid which does not meet specifications; repealing section 32-21-143, R. C. M., 1947, and all acts or parts of acts in conflict herewith.

32-21-143.2. Performance ability of brakes. Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification,

(b) Decelerating to a stop from not more than twenty (20) miles per hour at not less than the feet per second per second tabulated herein for its classification, and

(c) Stopping from a speed of twenty (20) miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one per cent (1%) grade), dry, smooth, hard surface that is free from loose material.

Classification of Vehicles

Classification of Vehicles	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of twenty (20) miles per hour
A Passenger vehicles with a seating capacity of ten (10) people or less including driver, not having a manufacturer's gross vehicle weight rating-----	52.8%	17	25
B-1 All motorcycles and motordriven cycles	43.5%	14	30

Classification of Vehicles	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second	Brake system application and braking distance in feet from an initial speed of twenty (20) miles per hour
B-2 Single unit vehicles with a manufacturer's gross vehicle weight rating of ten thousand (10,000) pounds or less-----	43.5%	14	30
C-1 Single unit vehicles with a manufacturer's gross weight rating of more than ten thousand (10,000) pounds --	43.5%	14	40
C-2 Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of three thousand (3,000) pounds or less	43.5%	14	40
C-3 Buses, regardless of the number of axles, not having a manufacturer's gross weight rating -----	43.5%	14	40
C-4 All combinations of vehicles in driveaway-towaway operations -----	43.5%	14	40
D All other vehicles and combinations of vehicles -----	43.5%	14	50

History: En. Sec. 2, Ch. 139, L. 1965.

32-21-143.3. Maintenance of brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

History: En. Sec. 3, Ch. 139, L. 1965.

32-21-143.4. Hydraulic brake fluid. (a) The term "hydraulic brake fluid" as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(b) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(c) The Montana highway patrol board shall, after public hearing following due notice, adopt and enforce regulations for the administration of this section and shall adopt and publish standards and specifications for hydraulic brake fluid which shall correlate with, and so far as practicable conform to, the then current standards and specifications of the society of automotive engineers applicable to such fluid.

(d) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this section. No person shall service any vehicle with brake fluid unless it complies with the requirements of this section.

History: En. Sec. 4, Ch. 139, L. 1965. "Repealing section 32-21-143, R. C. M. 1947, and all acts or parts of acts in conflict herewith."

Repealing Clause

Section 5 of Ch. 139, Laws 1965 read

32-21-150.1. Seat belts required in new vehicles. It is unlawful for any person to buy, sell, lease, trade or transfer from or to Montana residents at retail an automobile, which is manufactured or assembled commencing with the 1966 models, unless such vehicle is equipped with safety belts installed for use in the left front and right front seats thereof, and no such vehicle shall be operated in this state unless such belts remain installed.

History: En. Sec. 1, Ch. 115, L. 1965.

Title of Act

An act requiring that seat belts be installed in all automobiles manufactured or assembled commencing with the 1966

models; directing the highway patrol supervisor to establish specifications and requirements for approved types of safety belts and attachments; and providing a penalty.

32-21-150.2. Specifications for seat belts. All such safety belts must be of a type and must be installed in a manner approved by the highway patrol supervisor. The highway patrol supervisor shall establish specifications and requirements for approved types of safety belts and attachments thereto. The highway patrol supervisor will accept, as approved, all seat belt installations and the belt and anchor meeting the society of automotive engineers' specifications.

History: En. Sec. 2, Ch. 115, L. 1965.

32-21-150.3. Penalty for seat belt violations. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars (\$100.00).

History: En. Sec. 3, Ch. 115, L. 1965.

32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when. The district courts and the justice courts of the state of Montana and the municipal and police courts of cities and towns shall have concurrent original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of eighteen (18) years. Whenever, after a hearing before the court, it shall be found that a child under the age of eighteen (18) years has unlawfully operated a motor vehicle, the court may (a) impose a fine, not exceeding fifty dollars (\$50), provided such child shall not be imprisoned for failure to pay such fine, (b) may revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court, and (c) may order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding sixty (60) days, as shall be fixed by the court; provided, however, that if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child with the consent of the owner shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and im-

pounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

History: En. Sec. 1, Ch. 215, L. 1959; amd. Sec. 1, Ch. 188, L. 1963.

Amendment

The 1963 amendment inserted "and the justice courts" and "and the municipal and police courts of cities and towns" in

the first sentence; substituted "concurrent original jurisdiction" for "exclusive original jurisdiction" in the first sentence; and added to clause (a) of the second sentence the words "provided such child shall not be imprisoned for failure to pay such fine."

32-21-164. Summons—issuing to child under eighteen. Whenever any child under the age of eighteen (18) years shall unlawfully operate a motor vehicle in the presence of any peace officer of any county, city or town, or in the presence of any state highway patrolman, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to report to the district court or a justice court of the county or the municipal or police court of the city or town wherein the offense occurs; and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the judge or justice of the peace.

History: En. Sec. 2, Ch. 215, L. 1959; amd. Sec. 2, Ch. 188, L. 1963.

Amendment

The 1963 amendment inserted "or a

justice court" and "or the municipal or police court of the city or town"; and substituted "judge or justice of the peace" for "district judge" at the end of the section.

32-21-166. Vehicle equipment safety compact—text. This act shall be known and may be cited as the "Vehicle Equipment Safety Compact."

ARTICLE I—FINDINGS AND PURPOSES

(a) The party states find that: (1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional co-operation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to: (1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II—DEFINITIONS

As used in this compact: (a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III—THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be

no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE IV—RESEARCH AND TESTING

The commission shall have power to: (a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or co-ordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V—VEHICULAR EQUIPMENT

(a) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty (60) days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six (6) months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI—FINANCE

(a) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third ($1/3$) in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article III (h) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner.

Except where the commission makes use of funds available to it under Article III (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII—CONFLICT OF INTEREST

(a) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(b) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission; nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII—ADVISORY AND TECHNICAL COMMITTEES

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private

citizens and public officials, and may co-operate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any six (6) or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 109, L. 1965.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation to provide a means to speed up the development and adoption of uniform standards for new or improved automotive safety equipment and to be known as the Vehicle Equipment Safety Compact; setting forth the basic purposes of the compact; defining certain terms used in the act; establishing a vehicle equipment safety commission and outlining the composition, duties and responsibilities of such commission; authorizing commission to establish salaries and retirement system for full-time employees; providing that commission will have an appointed commissioner from each party state with commission business expenses to be paid by compact commission; empowering commission to carry on "library type" research but prohibiting other type research and testing; authorizing commission to issue rules and

regulations embodying performance requirements for items of equipment after conducting a needs study, publishing report of such study and holding hearings; providing that party states are not obligated to adopt rules, regulations or codes of commission but must consider them; providing that official adoption of rules, regulations or codes of the commission shall require affirmative action by the legislature of the state of Montana before such rules, regulations or codes shall be effective in Montana; requiring commission to submit to the budget director of Montana the budget of the commission, the costs of which are to be apportioned among the member states on the basis that each member state contribute equal moneys for one-third ($\frac{1}{3}$) of the total commission budget and that the remainder of the budget be apportioned according to the number of motor vehicles registered in the party state; requiring that commission adopt rules and regulations to minimize conflicts of interest; authorizing com-

mission to establish advisory and technical committees; providing for entry into and withdrawal from compact; providing for construction and severability of act; repealing all acts or parts of acts in conflict herewith.

32-21-167. Legislative findings on equipment safety. The legislature finds that: (1) The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion.

(2) The public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.

(3) The Montana highway patrol board, acting upon recommendations of the vehicle equipment safety commission and pursuant to the Vehicle Equipment Safety Compact, provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this act.

History: En. Sec. 2, Ch. 109, L. 1965.

32-21-168. Equipment requirements continued in force. (a) Provisions of sections 32-21-114 to 32-21-161, inclusive, R. C. M., 1947, shall continue to be of force and effect. The approval of the legislature of the state of Montana is a condition precedent to the taking effect of any rule, regulation or code that may be issued or adopted by the commission.

History: En. Sec. 3, Ch. 109, L. 1965.

32-21-169. State commissioner on vehicle equipment safety commission. The commissioner of this state on the vehicle equipment safety commission shall be the highway patrol supervisor who shall serve during his continuance as such officer. The commissioner of this state appointed pursuant to this section may designate an alternate from among the officers and employees of his agency to serve in his place and stead on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of such alternate shall be as determined by the commissioner designating such alternate.

History: En. Sec. 4, Ch. 109, L. 1965.

32-21-170. Retirement of equipment safety commission employees. The public employees retirement board of Montana may make an agreement with the vehicle equipment safety commission for the coverage of said commission's employees pursuant to Article III (f) of the compact. Any such agreement, as nearly as may be, shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

History: En. Sec. 5, Ch. 109, L. 1965.

32-21-171. Governmental agencies to co-operate with equipment safety commission. Within appropriations available therefor, the departments, agencies and officers of the government of this state may co-operate with and assist the vehicle equipment safety commission within the scope contemplated by Article III (h) of the compact. The departments, agencies and officers of the government of this state are authorized generally to co-operate with said commission.

History: En. Sec. 6, Ch. 109, L. 1965.

32-21-172. Documents filed and notices given by equipment safety commission. Filing of documents as required by Article III (j) of the compact shall be with the Montana highway patrol board. Any and all notices required by commission bylaws to be given pursuant to Article III (j) of the compact shall be given to the commissioner of this state and his alternate.

History: En. Sec. 7, Ch. 109, L. 1965.

32-21-173. Equipment safety commission budgets. Pursuant to Article VI (a) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

History: En. Sec. 8, Ch. 109, L. 1965.

32-21-174. Equipment safety commission accounts. Pursuant to Article VI (e) of the compact, the state examiner is hereby empowered and authorized to inspect the accounts of the vehicle equipment safety commission.

History: En. Sec. 9, Ch. 109, L. 1965. repealed all acts and parts of acts in conflict therewith.

Repealing Clause

Section 10 of Ch. 109, Laws 1965 re-

32-21-175. Governor as executive head for compact purposes. The term "executive head" as used in Article IX (b) of the compact shall, with reference to this state, mean the governor.

History: En. Sec. 11, Ch. 109, L. 1965.

CHAPTER 22—HIGHWAY CODE—GENERAL PROVISIONS

- Section 32-2201. Legislative findings.
 32-2202. Legislative policy and intent.
 32-2203. General definitions.

32-2201. Legislative findings. The legislative assembly recognizes that safe and efficient highway transportation is of important interest to all of the people of the state and hereby determines and declares that:

(1) Inadequate highways, roads, and streets obstruct the free flow of traffic, increase costs of motor vehicle operation, endanger the health and

safety of the citizens of the state, depreciate property values, and impede generally the economic progress of the state.

(2) The problems of establishing and maintaining adequate highways, roads, and streets, eliminating congestion, reducing accident frequency, providing parking facilities, and taking all necessary steps to insure safe and convenient transportation are urgent.

(3) Therefore, adequate and integrated systems of highways, roads, and streets are essential to the general welfare of the state of Montana.

(4) Providing adequate highway facilities is a proper public use and purpose, and that this act is necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

History: En. Sec. 1, Ch. 197, L. 1965.

Compiler's Note

This section and sec. 32-2202 were designated as Chapter 1 of the Highway Code, entitled "Legislative Intent."

Title of Act

An act to be known as the Montana Highway Code, for the codification and general revision of the laws pertaining to highways, including planning, construction, and maintenance; amending sections 16-1004, 16-2008, 16-2010, 16-2011, 16-3302, 53-122, 84-1831, 94-3202, and 94-3565, R. C. M. 1947, and repealing sections 16-1004.1, 16-1118, 16-1127, 16-1128, 16-2009, 16-2201 through 16-2204, 16-3311, 16-3312,

32-102 through 32-107, 32-201 through 32-208, 32-302 through 32-314, 32-316, 32-401 through 32-413, 32-415, 32-416, 32-501 through 32-507, 32-509 through 32-526, 32-601, 32-602, 32-701 through 32-711, 32-713 through 32-715, 32-901 through 32-905, 32-1002 through 32-1010, 32-1012 through 32-1014, 32-1016, 32-1301, 32-1601 through 32-1610, 32-1613 through 32-1618, 32-1620, 32-1622 through 32-1626, 32-1801 through 32-1804, 32-1901 through 32-1915, 32-2001 through 32-2010, 53-615 through 53-619, 53-621 through 53-623, 53-628 through 53-631, 53-634 through 53-639, 53-643, 84-1812 (1), 84-1812 (2), 84-1815, 84-1817, 89-821, 89-822, and 94-3201, R. C. M. 1947; providing for a savings clause and providing for the effective date of this act.

32-2202. Legislative policy and intent. Consistent with the foregoing determinations and declarations the legislative assembly intends:

(1) To place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain and protect the highway facilities of this state for present as well as for future use.

(2) To make the state highway commission custodian of the federal-aid and state highways, and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction.

(3) That the state of Montana shall have integrated systems of highways, roads, and streets, and that the state highway commission, the counties and municipalities assist and co-operate with each other to that end.

(4) To provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

History: En. Sec. 2, Ch. 197, L. 1965.

32-2203. General definitions. Subject to additional definitions contained in subsequent chapters of this code which are applicable to specific chapters or parts, and unless the context otherwise requires, terms are defined as follows:

(1) "Abandonment"—Cessation of use of right of way (easement) or activity thereon with no intention to reclaim or use again. (Sometimes called "vacation.")

(2) "Auditor"—County auditor.

(3) "Authority"—Montana toll bridge authority.

(4) "Board"—Board of county commissioners.

(5) "Bridge"—Includes rights of way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

(6) "Clerk"—County clerk and recorder.

(7) "Commission"—State highway commission.

(8) "Committee"—Local improvement district committee of supervisors.

(9) "Condemnation"—Taking by exercise of the right of eminent domain.

(10) "Construction"—Supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping, costs of right of way or other interests in land and elimination of hazards at railway-grade crossings.

(11) "Control of access"—The condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(12) "County road"—Any public highway opened, established, constructed, maintained, abandoned, or discontinued in accordance with the provisions of part 2 of chapter 8 [chapter 40 of this title] and part 4 of chapter 5 [chapter 31 of this title] of this code.

(13) "Easement"—A right acquired by public authority to use or control property for a designated purpose.

(14) "Eminent domain"—The right of the state to take private property for public use.

(15) "Engineer"—State highway engineer.

(16) "Federal-aid highway"—Any public highway which is a portion of any of the federal-aid highway systems.

(17) "Federal-aid highway systems"—All of the systems named hereafter and their urban extensions.

(18) "Federal-aid interstate system"—That system of public highway selected by the commission in co-operation with adjoining states, subject to the approval of the secretary of commerce as provided in the Federal Highway Act, as amended.

(19) "Federal-aid primary system"—That system of connected public highways designated by the commission subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(20) "Federal-aid secondary system"—That system of public highways not on the federal-aid primary or interstate systems selected by the commission in co-operation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(21) "Fee simple"—An absolute estate or ownership in property including unlimited power of alienation.

(22) "Highway"—Includes rights of way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(23) "Highway," "road," "street"—Whether they appear together or separately or are preceded by the adjective "public," these are general terms denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

(24) "Highway authority (ies)"—The entity (ies) at any level of government authorized by law to construct and maintain highways.

(25) "Maintenance"—Preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

(26) "Public highways"—All streets, roads, highways, bridges, and related structures, which have been or shall be:

(a) Built and maintained with appropriated funds of the United States or the state or any political subdivision thereof.

(b) Dedicated to public use.

(c) Acquired by eminent domain.

(d) Acquired by adverse user by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(27) "Right of way"—A general term denoting land, property, or any interest therein, usually in a strip, acquired for or devoted to highway purposes.

(28) "State highway"—Any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the commission.

(29) "Superintendent"—County road superintendent.

(30) "Supervisor"—County road supervisor.

(31) "Surveyor"—County surveyor.

(32) "Toll bridge"—Any bridge constructed by the Montana toll bridge authority, together with all appurtenances, additions, alterations, improvements, replacements, and the approaches thereto, lands used therefor, and improvements thereon.

(33) "Treasurer"—County treasurer.

History: En. Sec. 2-101, Ch. 197, L. 1965.

Compiler's Note

This section was designated as Chapter 2 of the Highway Code, entitled "Definitions."

CHAPTER 23—CLASSIFICATION OF HIGHWAYS

- Section 32-2301. Classification—highways and roads.
 32-2302. Lewis and Clark highway.

32-2301. Classification—highways and roads. (1) Public highways of this state are classed as follows:

- (a) Federal-aid highways
- (b) State highways
- (c) County roads
- (d) City streets.

(2) All highways which are not designated, selected, established, constructed, or maintained by the commission are county roads or city streets.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued, in accordance with the provisions of part 2 of chapter 8 [chapter 40 of this title] and part 4 of chapter 5 [chapter 31 of this title] of this code.

(4) City streets are those public highways under the jurisdiction of municipal officials.

History: En. Sec. 3-101, Ch. 197, L. 1965.

Compiler's Note
 This chapter was designated as Chapter 3 of the Highway Code, entitled "Classification of Highways."

32-2302. Lewis and Clark highway. There is hereby established the Lewis and Clark highway. It shall be composed of the following existing routes: (1) From the Idaho state line west of Lolo Hot Springs, Montana, to the junction with U. S. highway ninety-three (93) at Lolo.

(2) Thence north from Lolo on U. S. highway ninety-three (93) to Missoula.

(3) Thence east from Missoula on U. S. highway twelve (12) and ten (10) to Garrison.

(4) Thence east from Garrison on U. S. highway twelve (12) through Forsyth and Baker to the North Dakota state line.

History: En. Sec. 3-102, Ch. 197, L. 1965.

CHAPTER 24—ASSENT TO FEDERAL AID—STATE HIGHWAY COMMISSION, POWERS AND DUTIES

- Section 32-2401. Assent to federal-aid acts.
 32-2402. State highway commission.
 32-2403. Commission members—qualifications—appointment.
 32-2404. Commission members—bond—expenses.
 32-2405. Commission—chairman—meetings.
 32-2406. General power of commission.
 32-2407. Commission to designate highways.
 32-2408. Designation of highways not located entirely within the state.
 32-2409. Duties of commission—reports.
 32-2410. Compilation of statistics—investigation—consultation.
 32-2411. Agreements concerning effects of weight on highways.
 32-2412. Seeding along highways.

- 32-2413. Description and plan of new highway or controlled access facility—recording.
- 32-2414. Relocation of utilities facilities—hearings—order.
- 32-2415. Relocation—costs.
- 32-2416. Relocation—definitions.
- 32-2417. Certification and payment of claims.
- 32-2418. Prosecution for violation.
- 32-2419. Ports of entry and checking stations authorized.
- 32-2420. Checking stations required at major points of entry into state.
- 32-2421. Co-operation in use of ports of entry and checking stations.

32-2401. Assent to federal-aid acts. (1) The legislative assembly, for and on behalf of the state of Montana, assents to the provisions of the Federal-Aid Road Act, approved July 1, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto.

(2) The commission may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The commission may make all rules necessary to comply with the provisions of the acts assented to, and all other acts granting aid for public highways, and to obtain for the state the full benefits of such acts.

(4) The commission may do all other things necessary or required to carry out fully the co-operation contemplated by the acts of Congress assented to.

History: En. Sec. 4-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 24 to 27, inclusive, of this title (except secs. 32-2419 to 32-2421) were des-

ignated as Chapter 4 of the Highway Code, entitled "State Administration." Sections 32-2401 to 32-2418 herein were designated as Part 1 of Chapter 4, entitled "Assent to Federal Aid. State Highway Commission, Powers and Duties."

32-2402. State highway commission. The state highway commission consists of five (5) members to be appointed by the governor with the consent of the senate. Members of the commission now holding office shall continue until the expiration of their terms.

History: En. Sec. 4-102, Ch. 197, L. 1965.

32-2403. Commission members—qualifications—appointment. (1) Each member shall be a citizen of the United States and a resident of the state of Montana.

(2) One (1) member shall be a bona fide resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Lewis and Clark, Jefferson, Broadwater.

(b) District 2. Powell, Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park, Sweet Grass.

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin.

(d) District 4. Fergus, Petroleum, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan.

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer, Powder River, Carter, Fallon.

(3) (a) The terms of office of the members of the state highway commission shall be for four (4) years, and shall expire on the first day of February.

(b) If a vacancy occurs, the governor shall appoint with the consent of the senate a person having the qualifications herein provided who shall hold office only for the unexpired portion of the term in which the vacancy occurs.

(4) (a) No two (2) members shall at the time of appointment or thereafter during their respective terms of office be residents of the same district.

(b) Not more than three (3) members shall at the time of appointment or thereafter during their respective terms be members of the same political party.

(c) No elective state official or state officer during the term of office to which he was elected or appointed and no state employee shall be a member of the commission.

(d) No member shall be removed from office by the governor before the expiration of his term except for a disqualifying change of residence or for a cause based upon a determination of incapacity, incompetence, neglect of duty, or malfeasance in office.

History: En. Sec. 4-103, Ch. 197, L. 1965.

32-2404. Commission members—bond—expenses. (1) Each member shall give bond conditioned for the faithful performance of his duties in the sum of ten thousand dollars (\$10,000).

(2) Each member shall receive twenty dollars (\$20) per diem for each day actually spent in the performance of his duties and his actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission. Each member shall also receive his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be required of him by a majority vote of the commission. In no event shall a member's per diem payments exceed two thousand dollars (\$2,000) in any one (1) year.

History: En. Sec. 4-104, Ch. 197, L. 1965.

32-2405. Commission—chairman—meetings. (1) Annually the commission shall elect one (1) of its members as chairman. Election as chairman shall not interfere with the member's right to vote on all matters before the commission.

(2) The commission shall meet at least once each month for the purpose of transacting business including the consideration of claims and the letting of contracts.

(3) Three (3) members shall constitute a quorum. No resolution, motion, or other decision of the commission shall be adopted or passed without the favorable vote of at least three (3) members.

History: En. Sec. 4-105, Ch. 197, L. 1965.

32-2406. General power of commission. The commission may plan, lay out, alter, construct, reconstruct, improve, repair, maintain, and abandon highways on the federal-aid systems and state highways. It may co-operate and contract with counties and municipalities to provide assistance in performing such functions on other highways and streets.

History: En. Sec. 4-106, Ch. 197, L. 1965.

32-2407. Commission to designate highways. (1) The commission shall designate such public highways in the state as shall be classed as the federal-aid primary system.

(2) The commission shall in co-operation with the board of county commissioners, select such public highways in the state as shall be classed as the federal-aid secondary system.

(3) The commission shall, in co-operation with adjoining states, select the routes of the federal-aid interstate system.

(4) The commission shall designate such public highways in the state as shall be classed as state highways and make necessary rules and regulations for the construction, repair, maintenance, and marking of state highways and bridges.

History: En. Sec. 4-107, Ch. 197, L. 1965.

32-2408. Designation of highways not located entirely within the state. (1) The commission may designate highways subject to improvement under the provisions of the Federal-Aid Road Act, approved July 11, 1916, the Federal Highway Act, approved November 9, 1921, and all amendments thereto, even though such highways are not located entirely and continuously within the boundaries of the state. Such designations shall meet the following conditions:

(a) That the highway is on an approved federal-aid route and eligible for improvement under the federal-aid acts.

(b) That the location of a portion of the route outside the boundaries of the state is necessary because of natural geographical or physical conditions which make the construction of the highway within the state impossible or impracticable.

(c) That the portion of the route located outside the state does not connect with and is not a part of the state highway system of the adjoining state.

(2) The commission may expend funds for the construction, reconstruction, engineering, administration, betterment, and maintenance of such highways. It may do all things necessary or required to carry out

fully the co-operation contemplated under the federal-aid acts with regard thereto.

History: En. Sec. 4-108, Ch. 197, L. 1965.

32-2409. Duties of commission—reports. The commission shall: (1) Make all rules and regulations necessary for its government.

(2) Maintain and preserve all its records in its office at the capitol, keeping its office open at such times as its business shall require.

(3) File and preserve:

(a) A record of all proceedings and orders pertaining to the matters under its direction.

(b) Copies of all plans, specifications, contracts, estimates and official acts.

(4) Prepare and submit to the governor on or before the fifteenth day of each month a report of work constructed, under construction, and proposed for construction, the progress made during the preceding month, and recommendation for improvements and their estimated costs.

(5) Prepare and submit to the governor and the legislative assembly during its regular session, not later than the fifth legislative day, a comprehensive condensed report of commission activities for the preceding biennium. The report shall include:

(a) An accounting for all moneys received from federal or state sources.

(b) A review of projects undertaken and completed.

(c) A summary of maintenance work performed.

(d) Statistical tables covering personnel changes, compensation and status.

(e) A review of right of way procurement experience, including condemnation proceedings and the average price paid per acre of land in representative areas of the state.

(f) All other matters which would assist the assembly in determining the financial and legal requirements of the commission for the following biennium.

History: En. Sec. 4-109, Ch. 197, L. 1965.

32-2410. Compilation of statistics—investigation—consultation. (1) The commission shall compile statistics regarding public highways throughout the state and collect all related information deemed expedient.

(2) It shall investigate various methods of construction adapted to different sections of the state, and decide the best methods of construction and maintenance of highways, bridges, and road markers.

(3) The commission and the state highway engineer may be consulted at all reasonable times by county officers having care and authority over highways and bridges and shall advise them on construction, repair, alteration, or maintenance.

(4) The commission and the engineer shall furnish such information and advice as may be requested by persons interested in the construction, maintenance, and marking of public highways. They shall at all times lend their aid in promoting highway improvement throughout the state.

History: En. Sec. 4-110, Ch. 197, L. 1965.

32-2411. Agreements concerning effects of weight on highways. (1) The commission may contract with the United States or any state or group of states, or agencies thereof, or any nonprofit association, on a joint or co-operative basis, to study, analyze, or test the effects of weights on highways. Studies or tests shall seek solutions to the problems connected with the imposition of motor vehicle weights on highways.

(2) Studies or tests may be made either by designating existing highways or by constructing test strips, including natural resource roads.

History: En. Sec. 4-111, Ch. 197, L. 1965.

32-2412. Seeding along highways. (1) After a federal-aid or state highway is constructed, the commission shall seed borrow pits, slopes and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed shall be certified.

(2) The commission shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices and grass species from the Montana extension service, the experiment station, and the soil conservation service.

History: En. Sec. 4-112, Ch. 197, L. 1965.

32-2413. Description and plan of new highway or controlled access facility—recording. (1) Whenever the commission shall establish the location width, and lines of any new or proposed highway, or declare any road, street or highway as a controlled access facility, it shall make a description and plan showing the center line and the established width.

(2) That description and plan and an attached certified copy of the commission resolution establishing the location shall be recorded in the office of the proper county clerk and recorder in a separate book kept for that purpose. The commission shall, at its expense, furnish each county clerk and recorder with an appropriate book.

History: En. Sec. 4-113, Ch. 197, L. 1965.

32-2414. Relocation of utilities facilities—hearings—order. (1) After appropriate hearings, the commission may make and publish reasonable regulations for the installation, construction, maintenance, repair, renewal, or relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of any utility in, on, along, over, across, through or under any project on any of the federal-aid systems.

(2) The commission shall give written notice of the place and time of a public hearing to determine the necessity of any relocation of facilities to all concerned not less than twenty (20) days before the hearing. Hearing may be waived in writing by the utility concerned or other interested parties.

(3) After the hearing, the commission may determine that any such facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the valid order of the commission. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location.

History: En. Sec. 4-114, Ch. 197, L. 1965.

32-2415. Relocation—costs. Seventy-five per cent (75 %) of all costs of relocation, including the costs of acquisition of new right of way, of dismantling, and of removal, shall be paid by the commission as a cost of highway construction.

History: En. Sec. 4-115, Ch. 197, L. 1965.

32-2416. Relocation—definitions. For the purposes of the sections relating to relocation of utilities facilities, terms are defined as follows: (1) Utility—Includes publicly, privately, and co-operatively owned utilities.

(2) Cost of relocation—Includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) Federal-aid systems—Includes the federal-aid primary system, the federal-aid secondary system, the federal-aid interstate system, and urban extensions of all of them.

(4) Interstate system—Includes any highway now included or which shall hereafter be included as a part of the National System of Interstate and Defense Highways, provided for in the Federal-Aid Highway Act of 1956 and supplements or amendments.

History: En. Sec. 4-116, Ch. 197, L. 1965.

32-2417. Certification and payment of claims. (1) All accounts and expenditures shall be certified by the state highway engineer and paid by the state treasurer upon warrants drawn by the state auditor out of the proper funds.

(2) The commission shall certify the fund against which the warrant is to be drawn and state the project to which the payment will apply.

(3) The commission shall keep accounts showing the amount of money received for each project and the itemized expenses therefor.

History: En. Sec. 4-117, Ch. 197, L. 1965.

32-2418. Prosecution for violation. The commission shall prosecute any person guilty of violation of this code.

History: En. Sec. 4-118, Ch. 197, L. 1965.

32-2419. Ports of entry and checking stations authorized. To augment and help make more efficient and effective the enforcement of certain laws of the state of Montana, the state highway commission is hereby authorized and directed to establish from time to time temporary or permanent ports of entry or checking stations upon any highways in the state of Montana and at such places as the state highway commission shall deem necessary and advisable.

History: En. Sec. 1, Ch. 137, L. 1965.

Compiler's Note

Sections 32-2419 to 32-2421, inclusive, were not enacted as a part of the Highway Code. They do, however, become effective on the same date as the Highway Code, December 31, 1966.

Title of Act

An act authorizing and directing the state highway commission to establish temporary and permanent ports of entry and checking stations.

32-2420. Checking stations required at major points of entry into state. In addition to the power granted to the state highway commission in section 1 [32-2419] of this act, it shall be the duty of the commission to establish checking stations at convenient points on the major highways entering this state, and such checking stations shall be kept open at all times.

History: En. Sec. 2, Ch. 137, L. 1965.

32-2421. Co-operation in use of ports of entry and checking stations. The state highway commission shall co-operate with all other agencies of this state, or any political subdivisions thereof, in the use of such ports of entry or checking stations, so that maximum use can be made of such facilities in enforcement of the laws of this state.

History: En. Sec. 3, Ch. 137, L. 1965.

Effective Date

Section 5 of Ch. 137, Laws 1965 read "This act is effective December 31, 1966."

Budget

Section 4, Ch. 137, Laws 1965, related to preparation of the budget for the 1967-1968 biennium and is omitted as temporary.

CHAPTER 25—STATE HIGHWAY ENGINEER AND OTHER EMPLOYEES

- Section 32-2501. State highway engineer.
 32-2502. Commission employees—salaries.
 32-2503. Division of maintenance and control.

32-2501. State highway engineer. (1) The commission may appoint a professional engineer to be known as the "state highway engineer," and shall fix his salary.

(2) The state highway engineer shall perform any acts or duties relating to the functions of the commission which the commission may impose.

(3) The engineer shall take and file the constitutional oath of office before entering upon the performance of his duties, and shall give a bond in such sum as the commission may require.

(4) The commission may remove the engineer at any time for cause.

History: En. Sec. 4-201, Ch. 197, L. 1965. **Compiler's Note**

This chapter was designated as Part 2 of Chapter 4 of the Highway Code, entitled "State Highway Engineer and Other Employees."

32-2502. Commission employees—salaries. (1) The commission shall employ such personnel as it shall deem necessary and fix their compensation. Compensation shall be paid from funds deposited to the credit of the commission.

(2) The commission may, in its discretion, assign personnel for service to any county at the request of the board of county commissioners. The expense of this service shall be paid to the commission by the county.

History: En. Sec. 4-202, Ch. 197, L. 1965.

32-2503. Division of maintenance and control. The commission may organize and operate a division of maintenance and control to maintain highways constructed by the state and, by co-operation with boards of county commissioners, such other highways as the commission may deem necessary.

History: En. Sec. 4-203, Ch. 197, L. 1965.

CHAPTER 26—DISTRIBUTION AND APPORTIONMENT OF HIGHWAY CONSTRUCTION FUNDS

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| Section | 32-2601. Distribution and use of proceeds of gasoline dealers' license tax. |
| | 32-2602. Limitation on expenditure. |
| | 32-2603. Districts for apportionment of commission funds. |
| | 32-2604. Construction or reconstruction of bridges. |
| | 32-2605. Apportionment of state construction funds. |
| | 32-2606. Apportionment of state funds to federal-aid primary highway system. |
| | 32-2607. Apportionment of state funds to federal-aid secondary highway system. |
| | 32-2608. Secondary highway information. |
| | 32-2609. Apportionment of state funds to federal-aid interstate highway system. |
| | 32-2610. Increases in expenditures. |
| | 32-2611. Apportionment of state funds to federal-aid urban highways. |

32-2601. Distribution and use of proceeds of gasoline dealers' license tax. One per cent (1 %) of all money received in payment of license taxes under the provisions of this act shall be deposited in the state park account in the earmarked revenue fund. All other money received, except that amount paid out of the state board of equalization's suspense account for gasoline tax refund shall be used and expended by the state highway commission on the federal-aid highways in this state selected and designated under the provisions of the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amend-

ments thereto, and on highways leading from each county seat in the state to said federal highway system of federal-aid roads where such county seat is not on said system, and on such other roads as have been or may be authorized by the laws of Montana, for the collection and enforcement of this act, pursuant to the provisions of article XII, section 1 (b) of the constitution of the state of Montana. It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of sections 4-308 through 4-310 [32-2605 through 32-2607]; provided that nothing in this act shall be construed to conflict with said federal-aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana.

Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed. The legislative assembly hereby finds as a fact that of all the fuel sold in the state of Montana for consumption in internal combustion engines, not less than one per centum (1 %) is used for propelling boats on waterways of this state.

History: En. Sec. 4-301, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 3 of Chapter 4 of the Highway Code, entitled "Distribution and Apportionment of Highway Construction Funds."

32-2602. Limitation on expenditure. (1) The cost to the state for administration, dissemination of public information, and engineering on the systems of federal-aid highways shall not exceed for any fiscal year eight per cent (8%) of the total of state, federal-aid, and other available funds expended under the supervision of the commission.

(2) The annual expenditure for dissemination of public information shall not exceed one hundred and twenty-six thousand five hundred dollars (\$126,500).

History: En. Sec. 4-302, Ch. 197, L. 1965.

32-2603. Districts for apportionment of commission funds. All money available to the commission for highway construction purposes shall be apportioned among these financial districts, each composed of the counties named:

- District 1. Lincoln, Flathead, Lake.
- District 2. Glacier, Toole, Liberty, Hill, Blaine.
- District 3. Phillips, Valley, Daniels, Sheridan, Roosevelt.
- District 4. McCone, Richland, Dawson, Prairie, Wibaux.
- District 5. Fergus, Garfield, Petroleum.
- District 6. Pondera, Teton, Chouteau, Cascade, Judith Basin.

District 7. Lewis and Clark, Jefferson, Broadwater.

District 8. Sanders, Mineral, Missoula, Ravalli, Granite, Powell.

District 9. Beaverhead, Deer Lodge, Silver Bow, Madison.

District 10. Park, Gallatin, Sweet Grass, Meagher, Wheatland.

District 11. Golden Valley, Musselshell, Stillwater, Yellowstone, Carbon, Big Horn, Treasure.

District 12. Rosebud, Custer, Fallon, Powder River, Carter.

History: En. Sec. 4-306, Ch. 197, L.
1965.

32-2604. Construction or reconstruction of bridges. (1) The commission may allocate from state construction moneys available for the federal-aid highway system up to one million dollars (\$1,000,000) in any fiscal year for the construction or reconstruction of any major bridge or system of bridges on the primary or secondary highway systems. This may be done only when the use of regularly apportioned funds would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts.

(2) When the commission, as a part of its finding of public necessity, declares that a particular bridge should be constructed or reconstructed on a designated portion of the primary or secondary highway, the allocation may be made. The allocation may be expended:

(a) On primary bridges when the engineer's estimate of the cost of construction or reconstruction is in excess of five hundred thousand dollars (\$500,000).

(b) On secondary bridges when the engineer's estimate of the state's share of the cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal-aid secondary system of the county or counties for a period of three (3) years.

(3) The allocation shall be made from available state construction moneys for the primary system before the apportionment provided for in section 4-309 [32-2606], and for the secondary system before the apportionment provided for in section 4-310 [32-2607].

History: En. Sec. 4-307, Ch. 197, L.
1965.

32-2605. Apportionment of state construction funds. Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds to the various federal-aid highway systems as may be required to match the amounts of federal aid available for expenditure on each respective system.

History: En. Sec. 4-308, Ch. 197, L.
1965.

32-2606. Apportionment of state funds to federal-aid primary highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall determine the amount of incompleeted mileage of the federal-aid primary system within each of the financial districts.

(a) As a basis for determination of incompleted mileage, the commission shall compare the present condition of the system with the latest approved state standards. Any mileage failing to meet those standards shall be included in the determination as partially completed. The proportion of completion shall be determined by estimating the amount of work which must be performed to complete the highway.

(2) The commission shall then compute the ratio between the incompleted mileage in each district and the total incompleted mileage of the federal-aid primary system in the state.

(3) The commission shall then apportion available state construction funds to the federal-aid primary system in each district on the basis of the computed ratio.

History: En. Sec. 4-309, Ch. 197, L. 1965.

32-2607. Apportionment of state funds to federal-aid secondary highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) One-fourth ($\frac{1}{4}$) in the ratio of land area in each district to the total land area in the state.

(b) One-fourth ($\frac{1}{4}$) in the ratio of the rural population in each district to the total rural population in the state.

(c) One-fourth ($\frac{1}{4}$) in the ratio of the rural road mileage in each district to the total rural road mileage in the state.

(d) One-fourth ($\frac{1}{4}$) in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county therein on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, expenditures in any county may exceed the amount apportioned to that county to the extent of three (3) times the amount of the last apportionment thereto. The amount of any such excess expenditures shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) Rural population—Total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the latest federal census.

(i) Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) Rural road mileage—All road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system.

(i) Rural road mileage reported by the road inventory of the commission shall be used in determining rural road mileage.

(c) Value of rural lands—Includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the state board of equalization.

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the commissioner of state lands and investments.

(iii) The average value of privately owned lands shall be the average value of state-owned lands, if the actual value is not available.

History: En. Sec. 4-310, Ch. 197, L. 1965.

32-2608. Secondary highway information. On or before August 30 of each year, the commission shall inform each board of county commissioners of: (1) The total amount of secondary highway funds and the amount apportioned to each county.

(2) The location of proposed secondary highway projects when the information is available.

(3) Such other matters regarding secondary highway construction as the commission deems advisable and of interest to the counties.

History: En. Sec. 4-311, Ch. 197, L. 1965.

32-2609. Apportionment of state funds to federal-aid interstate highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds for the federal-aid interstate highway system among the financial districts.

(2) The apportionment shall be based upon the ratio between the estimated cost of constructing or reconstructing the system in each district and the estimated cost of constructing or reconstructing the entire system within the state.

(3) The cost estimates to be used shall be those developed by the commission in accordance with the provisions of the Federal-Aid Highway Act of 1956, as amended.

History: En. Sec. 4-312, Ch. 197, L. 1965.

32-2610. Increases in expenditures. (1) The commission may increase the expenditures made in any financial district to the extent of:

(a) Fifteen per cent (15%) more than the amount of money allocated to such district in the latest year for the federal-aid primary system or the federal-aid secondary system.

(b) One hundred per cent (100%) more than the amount of money allocated to such district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to any district for the next succeeding fiscal year shall be decreased by an amount equal to any increased expenditures.

History: En. Sec. 4-313, Ch. 197, L. 1965.

32-2611. Apportionment of state funds to federal-aid urban highways.

(1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion state construction funds available for matching federal-aid urban funds to the cities in the state over five thousand (5,000) population in the ratio of urban population in each such city to the total urban population in all cities over five thousand (5,000) population in the state.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities over five thousand (5,000) population and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any city may exceed the amount apportioned to that city. The amount of any such excess expenditures shall be deducted from future apportionments to that city.

History: En. Sec. 4-314, Ch. 197, L. 1965.

CHAPTER 27—MONTANA TOLL BRIDGE AUTHORITY

- Section 32-2701. Creation of authority—members—salary—officers—seal.
 32-2702. Powers of authority.
 32-2703. Resolution—estimates of costs.
 32-2704. Limitations on placing of toll bridges.
 32-2705. Contents of petition.
 32-2706. Action by authority on petition.
 32-2707. Powers of authority in connection with toll bridge bond issues.
 32-2708. Reserve and contingency funds—deposit.
 32-2709. Additional bond terms permitted.
 32-2710. Toll charges—fixing—expiration.
 32-2711. Revenue fund—sinking fund.
 32-2712. Construction.
 32-2713. State highway engineer—duties.
 32-2714. Annual statement—records.
 32-2715. Limitations on building bridges near toll bridges.
 32-2716. Payment of bonds—free bridge.

32-2701. Creation of authority — members — salary — officers — seal.

(1) There is hereby created the Montana toll bridge authority, composed of members of the commission, who shall receive no compensation other than that received as members of the commission.

(2) The chairman of the commission shall be the chairman of the authority, and the state highway engineer shall be the secretary-treasurer. All contracts, bonds, and other instruments shall be executed in the name of the authority by the chairman and attested by the secretary-treasurer.

(3) The authority shall adopt a seal bearing its name which shall be affixed to such bonds, instruments, and records as the authority or the chairman may direct.

History: En. Sec. 4-401, Ch. 197, L.
1965.

Compiler's Note

This chapter was designated as Part 4 of Chapter 4 of the Highway Code, entitled "Montana Toll Bridge Authority."

32-2702. Powers of authority. (1) The authority shall adopt rules and regulations for its own government and for the administration of this part [chapter] and the execution of the powers and duties hereby conferred.

(2) The authority may establish and construct a toll bridge or toll bridges upon any of the public highways of this state, together with approaches, wherever found and determined to be necessary for advantageous, and practicable for crossing any stream or body of water.

(3) The authority may issue toll bridge revenue bonds to pay the cost of any toll bridge.

History: En. Sec. 4-402, Ch. 197, L.
1965.

32-2703. Resolution—estimates of costs. (1) Whenever the authority finds and determines that the construction of any toll bridge is necessary, advantageous, and practicable, it shall adopt a resolution making such finding and determination and declaring that public convenience and necessity require the construction of the toll bridge.

(2) The resolution shall contain preliminary estimates of:

(a) The cost of construction.

(b) The amount of money to be raised by the issuance of revenue bonds.

(c) The probable amounts of money, property materials, or labor, if any, to be contributed from other sources in aid of construction.

(3) The authority shall also estimate the costs of maintaining, repairing, and operating the toll bridge, and the revenues to be derived from it.

(4) No toll bridge shall be constructed unless the authority first finds and determines that the probable revenues will be sufficient to pay the costs of maintaining, repairing, and operating it, and to pay the principal and interest on revenue bonds issued to pay its costs.

(5) The failure of the authority to make the estimates required by this section or to make them in proper form shall in no way affect the validity or enforceability of any revenue bonds.

History: En. Sec. 4-403, Ch. 197, L.
1965.

32-2704. Limitations on placing of toll bridges. (1) No toll bridge shall be authorized or constructed over or across any stream within a radius of fifty (50) miles of either side of any free public bridge existing on that stream unless there shall first have been filed with the authority a petition requesting its construction.

(2) The petition shall be signed by:

(a) Not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of the county in which the toll bridge is proposed to be constructed; or

(b) Not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of both counties when the toll bridge is proposed to be constructed upon a stream which constitutes the boundary between two (2) counties.

History: En. Sec. 4-404, Ch. 197, L. 1965.

32-2705. Contents of petition. (1) The petition shall contain a statement showing the location of the proposed toll bridge and the locations of all free public bridges existing upon the same stream within a radius of fifty (50) miles of the proposed toll bridge. It shall also contain a concise statement of facts showing that the proposed construction is necessary, advantageous, and practicable.

(2) Several copies of the petition identical in form may be circulated. Each person circulating a copy must attach his affidavit that the signatures appearing thereon are genuine and that the signers knew the contents at the time of signing.

(3) All copies from each county shall be attached together as to form a single petition. The petition shall have attached to it before it is filed with the authority a certificate of the county clerk and recorder showing whether or not it has been signed by not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of the county.

(4) The county clerk and recorder shall transmit the petition to the authority.

History: En. Sec. 4-405, Ch. 197, L. 1965.

32-2706. Action by authority on petition. (1) The authority shall meet and consider the petition within thirty (30) days after it is filed. It shall be the sole judge of the sufficiency of the petition.

(2) If the authority finds that the petition bears the required number of signatures and is in proper form, and finds and determines that the construction of the proposed toll bridge is necessary, advantageous, and practicable, it shall adopt a resolution making that finding and determination. The resolution shall also contain the estimates and data required by section 4-403 [32-2703].

(3) The authority's finding of the sufficiency of the petition shall be conclusive in favor of any innocent holder of bonds issued as a result of the presentation of the petition.

History: En. Sec. 4-406, Ch. 197, L. 1965.

32-2707. Powers of authority in connection with toll bridge bond issues. (1) In connection with the issuance and in order to secure the payment of toll bridge bonds, the authority may:

(a) Pledge all or any part of the tolls, income, profit, and revenue of any such toll bridge, and covenant to pay such tolls, income, profit, and revenue into appropriate funds.

(b) Covenant to fix and establish such tolls, rates, and charges as will provide at all times enough funds to:

(i) Pay all costs of operation, maintenance, and repairs of the toll bridge.

(ii) Meet and pay the principal of and interest on all toll bridge bonds as they severally become due and payable.

(iii) Create such reserves for the principal and interest of such bonds and to meet contingencies in operation and maintenance as the authority shall determine.

(c) Make such additional covenants as to tolls, rates and charges as it shall deem necessary to secure the payment of bonds.

(2) No truck, trailer, or automobile licensed in the name of the state of Montana or the United States or any branch or department thereof shall be required to pay for crossing any toll bridge.

History: En. Sec. 4-407, Ch. 197, L. 1965.

32-2708. Reserve and contingency funds—deposit. (1) The authority may create a special fund or funds, in addition to those required by this part [chapter], for moneys reserved for principal and interest on bonds and for meeting contingencies in the operation and maintenance of any toll bridge.

(2) It may determine the depository or depositories in which such funds shall be deposited and the manner in which such deposits shall be secured. Any bank or trust company incorporated under the laws of this state may act as a depository and may furnish such indemnifying bonds or pledge such securities as may be required by the authority.

History: En. Sec. 4-408, Ch. 197, L. 1965.

32-2709. Additional bond terms permitted. (1) The authority may:

(a) Provide for replacement of lost, destroyed, or mutilated bonds.

(b) Covenant against extending the time for the payment of the principal of or interest on any toll bridge bonds, directly or indirectly in any manner.

(c) Prescribe and covenant as to the events of default and terms and conditions upon which any or all toll bridge bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(d) Covenant as to the rights, liabilities, powers, and duties arising upon the breach of any covenant, condition, or obligation.

(e) Vest in a trustee or trustees the right to enforce any covenant made to secure or to pay toll bridge bonds, provide for their powers and duties, limit their liabilities, and provide the terms and conditions upon which the trustee or trustees or the holders or any proportion of them may enforce any such covenant.

(2) The authority may make such covenants and do any and all acts and things necessary or convenient or desirable in order to secure toll bridge bonds or to make them more marketable, notwithstanding

that such covenants, acts or things may not be enumerated or expressly authorized. The legislative assembly intends to grant to the authority power to do all things in the issuance of toll bridge bonds and in providing for their security that may not be inconsistent with the constitution.

History: En. Sec. 4-409, Ch. 197, L. 1965.

32-2710. Toll charges—fixing—expiration. (1) The authority may fix and change rates of toll and other charges for all toll bridges built under the provisions of this part [chapter]. The rates and charges shall at all times be fixed at rates which will yield sufficient annual revenue to pay annual operating and maintenance expenses, to redeem and pay the principal of and interest on all bonds as they severally come due, and to create such reserves as the authority shall deem necessary.

(2) All tolls and other revenue shall constitute a trust fund for the security and payment of toll bridge bonds. They shall not be pledged for any other purpose as long as any of the bonds are outstanding and unpaid.

History: En. Sec. 4-410, Ch. 197, L. 1965.

32-2711. Revenue fund—sinking fund. (1) The authority shall adopt rules and regulations for the collection of tolls and the deposit thereof to the credit of the appropriate toll bridge revenue fund, and for the transfer therefrom to the appropriate sinking fund of money for the payment and redemption of bonds as they severally mature.

(2) The money remaining in each separate toll bridge revenue fund after providing the amount required for interest and redemption of bonds shall be held and applied in accordance with the proceedings relating to the authorization of the bonds.

History: En. Sec. 4-411, Ch. 197, L. 1965.

32-2712. Construction. Whenever funds are available for the construction of any toll bridge, the commission shall let contracts by competitive bidding, after such notice and upon such terms as it shall prescribe.

History: En. Sec. 4-412, Ch. 197, L. 1965.

32-2713. State highway engineer—duties. The engineer shall have full charge of the construction, operation, and maintenance of all toll bridges authorized by the authority. Under the supervision of the authority, and subject to its rules and regulations, the engineer shall have charge of the collection of all tolls.

History: En. Sec. 4-413, Ch. 197, L. 1965.

32-2714. Annual statement—records. (1) The engineer shall keep full and complete accounts for each toll bridge constructed. Each year he shall cause to be prepared and filed in the office of the secretary of

state a balance sheet and income and profit and loss statement showing the financial condition of each toll bridge.

(2) All books, records, and papers relating to toll bridges shall at all reasonable times [to] be open to the inspection of any citizen of the state.

History: En. Sec. 4-414, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted brackets around the word "to" in subsection (2) to denote surplusage.

32-2715. Limitations on building bridges near toll bridges. So long as any of the bonds issued for the construction of any toll bridge are outstanding and unpaid, there shall not be erected, constructed, or maintained any other bridge for public use over or across the stream upon which the toll bridge is located within a distance of twenty (20) miles on either side of the toll bridge. This prohibition does not apply to bridges in existence and being used at the time of the issuance of such bonds.

History: En. Sec. 4-415, Ch. 197, L. 1965.

32-2716. Payment of bonds—free bridge. When the bonds issued for the purpose of paying the cost of any toll bridge are retired, the cost of construction having thereby been repaid in full, the bridge shall thereafter be maintained and operated by the commission as a free bridge. The expense of any surveys and reports paid from the funds of the commission shall then be deemed fully repaid.

History: En. Sec. 4-416, Ch. 197, L. 1965.

CHAPTER 28—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR COUNTY ROADS

- Section 32-2801. Powers and duties of county commissioners respecting county roads.
 32-2802. Right of way—contracts—control of traffic.
 32-2803. Plat books—surveyor—employees.
 32-2804. County contracts with state or federal agency.
 32-2805. Inspection of roads and construction work—compensation.
 32-2806. Purchase of machinery and materials.
 32-2807. Use of county road machinery.
 32-2808. Width of road.
 32-2809. Highways to follow subdivision or section lines.
 32-2810. Auto passes excluding livestock.
 32-2811. Auto passes on county roads.
 32-2812. Limit on amount expended in road district.
 32-2813. Reseeding of right of way areas.
 32-2814. County supervisors to control weeds and exterminate weed seeds—charges.
 32-2815. Board and others to furnish information.

32-2801. Powers and duties of county commissioners respecting county roads. (1) Each board of county commissioners shall have general supervision over the county roads within the county. The board may, in its discretion, divide the county into suitable road districts, and place each district in charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in his district.

If the board does not divide the county into districts, the county itself shall constitute one road district.

(2) Each board shall cause to be surveyed, viewed, laid out, recorded, opened, worked, and maintained such county roads as are petitioned for by freeholders. Guideposts shall be erected.

(3) Each board shall discontinue or abandon county roads when freeholders properly petition therefor.

(4) Each board may, in its discretion, cause to be done whatever may be necessary for the best interest of the county roads and the road districts.

(5) Each board shall make such reports relating to roads under its supervision as may be requested by the commission.

History: En. Sec. 5-101, Ch. 197, L. 1965. Highway Code, entitled "County Administration." This chapter was designated as Part 1 of Chapter 5, entitled "Board of County Commissioners Responsibility for County Roads."

Compiler's Note

Chapters 28 to 31, inclusive, of this title were designated as Chapter 5 of the

32-2802. Right of way—contracts—control of traffic. (1) Each board shall contract, agree for, purchase, or otherwise lawfully acquire right of way for county roads over private property. It may institute proceedings under sections 93-9901 to 93-9926, paying for such right of way from the county road fund. Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.

(2) Subject to the limitations and restrictions provided in the codes for the letting of contracts, each board may let by contract the construction, maintenance and improvement of county roads, and the construction, maintenance, or repair of bridges when the amount of work to be done exceeds the sum of one thousand dollars (\$1,000).

(3) Subject to the limitations and restrictions provided in the constitution and codes, each board may issue bonds upon the faith and credit of the county for the construction or improvement of county roads, state highways, and bridges.

(4) Each board may, in its discretion, limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part thereof, when it is necessary in order to preserve or repair such roads.

History: En. Sec. 5-102, Ch. 197, L. 1965.

32-2803. Plat books — surveyor — employees. (1) Each board may, in its discretion, order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable plat books. Each board shall have recorded therein with the county clerk a full description of each county road, showing each course by bearing and distance, a full and complete map thereof, and a record of all proceedings with reference thereto.

(2) Each board may, in its discretion, employ a competent road supervisor, who shall serve during the pleasure of the board. Under the direction and control of the board he shall:

(a) Prescribe the times and places for all work to be done on the county roads.

(b) Report any delinquency or inefficiency of any person employed on any road.

(c) Perform such other duties as may be prescribed by the board.

(3) In any county in which the county surveyor is not paid an annual salary, he may by agreement be employed by the board to perform the services of road supervisor. He shall not be paid for any duty otherwise required by law to be performed by him as county surveyor.

(a) Nothing in this section shall be construed to alter or repeal the provisions of sections 5-308 and 5-309 of this chapter.

(4) Each board may appoint a county road superintendent. He shall have such duties, powers, and responsibilities as are set forth in part 3 (b) of this chapter [chapter 30 of this title].

History: En. Sec. 5-103, Ch. 197, L. 1965. Code, contained no sections 5-308 and 5-309 as referred to in paragraph (3) (a) of this section.

Compiler's Note

Chapter 197, Laws 1965, the Highway

32-2804. County contracts with state or federal agency. Whenever construction of farm to market, secondary, or feeder roads is to be financed in whole or in part by federal funds, and the United States secretary of commerce shall affirmatively find that some method other than competitive bidding is in the public interest, each board may:

(1) Enter into and contract jointly or independently with either the commission, the bureau of public roads, or any other federal agency to:

(a) Acquire rights of way.

(b) Survey and construct such roads.

(c) Do any other thing essential and practical in securing such roads by force account, unit price, or otherwise.

History: En. Sec. 5-104, Ch. 197, L. 1965.

32-2805. Inspection of roads and construction work—compensation.

(1) The board may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done under contract or otherwise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) The person or persons making such inspections shall receive the sum of fifteen dollars (\$15) per day and actual expenses. The claims shall be audited and allowed in the same manner as other claims against the county.

(3) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board.

History: En. Sec. 5-105, Ch. 197, L. 1965.

32-2806. Purchase of machinery and materials. (1) Out of the county road fund, each board may:

(a) Purchase and operate grading and other machinery necessary or desirable for the improvements of the county roads.

(b) Acquire deposits or quarries of suitable road-building material by purchase, condemnation, or lease.

(2) Each board may also acquire such road-building material by gift.

(3) Any crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads, may be sold by the board at not less than actual cost of production to any person, firm, or corporation desiring to use it upon any public street or highway in the county. The proceeds of any such sale shall be paid into the county road fund.

History: En. Sec. 5-106, Ch. 197, L. 1965.

32-2807. Use of county road machinery. Each board may, in its discretion, authorize and permit the use of any county highway or road machinery or equipment when not in use in any district, in connection with the construction repair and maintenance of streets, avenues and alleys within any incorporated city or town of four thousand (4,000) population or less located in the county.

History: En. Sec. 5-107, Ch. 197, L. 1965.

32-2808. Width of road. (1) The width of all county roads, except bridges, alleys, or lanes, must be sixty (60) feet unless a greater or smaller width is ordered by the board on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least twenty (20) feet.

(3) Nothing in this section shall be construed as increasing or decreasing the width of either kind of highway or road already established or used as such.

History: En. Sec. 5-108, Ch. 197, L. 1965.

32-2809. Highways to follow subdivision or section lines. County roads must be laid out and opened when practicable upon subdivision or section lines. However, when public purposes shall be best served thereby, roads may be laid out in diagonal lines.

History: En. Sec. 5-109, Ch. 197, L. 1965.

32-2810. Auto passes excluding livestock. Where a county road connects with a state or federal highway which is fenced on both sides, the board may construct and maintain extensions of the fence across the right of way of the intersecting county road. The board shall construct a pass which will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions

of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.

History: En. Sec. 5-110, Ch. 197, L.
1965.

32-2811. Auto passes on county roads. Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefor no longer exists.

History: En. Sec. 5-111, Ch. 197, L.
1965.

32-2812. Limit on amount expended in road district. The expenditures in any road district for labor and equipment, together with the compensation to be paid to the supervisor, shall not exceed the sum apportioned quarterly by the board to that district. However, if that sum is not sufficient, the board may appropriate any amount from the county road fund necessary for the use of such district. The full amount of all road taxes collected in remote districts shall be expended annually by the county commissioners on the roads within such districts.

History: En. Sec. 5-112, Ch. 197, L.
1965.

32-2813. Reseeding of right of way areas. (1) Whenever the natural sod cover on right of way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board shall require that such disturbed areas be seeded to an adaptable perennial grass or combination of perennial grasses and legumes. Every effort shall be made to establish a sod cover on the disturbed area.

(2) All seed used shall meet certified standards.

(3) Time and method of seeding, fertilizing practices, and grass species shall be those recommended by the Montana extension service.

History: En. Sec. 5-113, Ch. 197, L.
1965.

32-2814. County supervisors to control weeds and exterminate weed seeds—charges. The board of weed seed extermination supervisors shall control noxious weeds on the county roads. If the commission does not control noxious weeds on state and federal highways in any county, the supervisors shall control them. Upon presentation by the supervisors of a verified account of the expenses incurred, the costs thereof shall be paid by the commission.

History: En. Sec. 5-114, Ch. 197, L.
1965.

32-2815. Board and others to furnish information. The board and road supervisor of any county, and all other officers who may have the care and supervision of the public highways and bridges, shall, upon the

written request of the commission, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties.

History: En. Sec. 5-115, Ch. 197, L. 1965.

CHAPTER 29—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR BRIDGES AND FERRIES

- Section 32-2901. County to maintain bridges.
 32-2902. Bridges over streams in cities and towns.
 32-2903. Election to determine question of construction—bonds—special levy.
 32-2904. Removal of obstructions and repair of bridges.
 32-2905. Bridges under control and management of board—police regulations.
 32-2906. Construction and maintenance of bridges crossing county lines.
 32-2907. Ferries uniting two countries—report of ferrymen on joint ferries.

32-2901. County to maintain bridges. Each board shall maintain all public bridges other than those maintained by the commission.

History: En. Sec. 5-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 5 of the Highway Code, entitled "Board of County Commissioners Responsibility for Bridges and Ferries."

32-2902. Bridges over streams in cities and towns. (1) Each board shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

(2) The city or town in which any such bridge is situated shall pay the whole or such part, not less than one-half ($\frac{1}{2}$), to be determined by the board, of the cost of planking, replanking, paving or repaving the bridge. The city or town shall construct and maintain in good repair the bridge approaches.

History: En. Sec. 5-202, Ch. 197, L. 1965.

32-2903. Election to determine question of construction—bonds—special levy. (1) Before undertaking the construction of any bridge the cost of which shall exceed ten thousand dollars (\$10,000), in any city or town, the board shall submit to the qualified electors of the county, at a general or special election, the question of whether the bridge shall be constructed and its cost paid by the county.

(2) If the electors vote in favor of construction, the board may issue and sell bonds of the county to the amount authorized for the construction of the bridge. Bonds shall be issued under such regulations as apply to other bonds of the county.

(3) The bridge shall be constructed using the proceeds of such sale.

(4) If the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in section 7-104 [32-3604] of this code.

History: En. Sec. 5-203, Ch. 197, L. 1965.

32-2904. Removal of obstructions and repair of bridges. (1) Whenever any county road becomes obstructed, or any bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board or the county surveyor, if he is in charge, shall remove the obstruction or repair the bridge, upon being notified thereof.

(2) Nothing in this section shall be construed as holding the board, or any member, responsible or liable for anything other than willful, intentional neglect or failure to act.

History: En. Sec. 5-204, Ch. 197, L. 1965.

32-2905. Bridges under control and management of board—police regulations. (1) The board shall manage and control all bridges referred to in this part [chapter]. It shall direct the method and time of making repairs, planking, replanking, paving and repaving.

(2) The board may also make repairs to stream beds and watercourses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

(3) Such bridges and all persons on them shall be subject to the reasonable police regulations of the city or town in which any such bridge is situated.

History: En. Sec. 5-205, Ch. 197, L. 1965.

32-2906. Construction and maintenance of bridges crossing county lines. Bridges crossing the line between counties shall be constructed and maintained by the counties into which the bridges reach. Each county shall pay such portion of the costs of construction and maintenance as shall have been previously agreed upon by the respective boards.

History: En. Sec. 5-206, Ch. 197, L. 1965.

32-2907. Ferries uniting two counties—report of ferrymen on joint ferries. (1) When a public ferry, if constructed would unite two counties, the boards may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When ferrymen are employed on joint ferries, they shall report quarterly to each board, giving such information as each board may require.

History: En. Sec. 5-207, Ch. 197, L. 1965.

CHAPTER 30—COUNTY ROAD SUPERINTENDENT

- Section** 32-3001. County road superintendent—appointment and compensation.
 32-3002. Duties of county road superintendent.
 32-3003. Accounts and statements.
 32-3004. Examination of superintendent's report—warrant for claims.
 32-3005. Equipment, tools, and implements for use of superintendent.
 32-3006. Employment of laborers—hiring of equipment.
 32-3007. Construction of drains and ditches—penalty for obstructions.

32-3001. County road superintendent—appointment and compensation. (1) After his appointment, the county road superintendent shall serve at the pleasure of, and under the direction and control of the board. He shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of his duties.

(2) He shall receive such compensation as is determined by the board.

History: En. Sec. 5-301, Ch. 197, L. 1965. **Compiler's Note**

This chapter was designated as Part 3 of Chapter 5 of the Highway Code, entitled "County Road Superintendent."

32-3002. Duties of county road superintendent. (1) Under the direction and supervision of the board, the superintendent shall furnish plans and specifications for highway or bridge work. He shall be chairman of all boards of road viewers.

(2) Under such direction and supervision, he shall also:

(a) Take charge of all roads, bridges and causeways under the jurisdiction of the county.

(b) Open all new roads when they are duly established and ordered to be opened by the board.

(c) Perform at the time and in the manner directed by the board whatever shall be lawfully directed by the board concerning the public highways under the jurisdiction of the county.

History: En. Sec. 5-302, Ch. 197, L. 1965.

32-3003. Accounts and statements. The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. He shall give to each person performing work, or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid therefor.

History: En. Sec. 5-303, Ch. 197, L. 1965.

32-3004. Examination of superintendent's report—warrant for claims. At the first monthly or quarterly meeting held after filing of the superintendent's report, the board shall examine it. Upon the presentation of any certificate issued by the superintendent, and verification of it by the holder, as in other cases of claims against the county, the board shall cause to be issued a warrant for the amount of the certificate drawn on the treasurer against the county road fund.

History: En. Sec. 5-304, Ch. 197, L. 1965.

32-3005. Equipment, tools, and implements for use of superintendent. Upon the requisition of the superintendent, the board shall furnish any equipment, tools, and implements necessary, and pay for them out of the county road fund. The superintendent shall preserve the equipment, tools, and implements, and shall not allow them to be used except on public highways. At the expiration of his term of office, or upon his

removal therefrom, he must turn over all equipment, tools, and implements to his successor or to the board.

History: En. Sec. 5-305, Ch. 197, L. 1965.

32-3006. Employment of laborers—hiring of equipment. Whenever it is necessary, the superintendent may employ suitable laborers, hire equipment and implements, and contract as to the wages and prices to be paid. Wages and prices shall not exceed rates established by the board for an eight-hour day.

History: En. Sec. 5-306, Ch. 197, L. 1965.

32-3007. Construction of drains and ditches—penalty for obstructions. (1) The superintendent may open or construct drains and ditches for making and preserving roads and highways, doing as little injury as may be possible to the adjoining land.

(2) Any person who stops or obstructs any drain or ditch so constructed forfeits the sum of fifty dollars (\$50.00), to be recovered by the superintendent or board in a civil action in any court of competent jurisdiction.

(3) Any person aggrieved by the act of the superintendent may make a written complaint to the board, which if it finds the complaint valid, may pay damages out of the county road fund.

History: En. Sec. 5-307, Ch. 197, L. 1965.

CHAPTER 31—LOCAL IMPROVEMENT DISTRICTS

Section	32-3101.	Duty of board to construct roads and levy assessments.
	32-3102.	Petition for construction or improvement of road.
	32-3103.	Resolution of public interest.
	32-3104.	Proceedings upon receipt of petition.
	32-3105.	Proceedings at meeting.
	32-3106.	Duties of committee and road superintendent.
	32-3107.	Report of county road superintendent—order creating district.
	32-3108.	Sharing of costs—order of board.
	32-3109.	Payment of county's share of expense.
	32-3110.	Formation and boundaries of district.
	32-3111.	Assessment of lands in each part—lien.
	32-3112.	Method of assessment.
	32-3113.	Appointment of inspector—compensation of inspector and committee.
	32-3114.	Construction by county—lien.
	32-3115.	Apportionment of costs—assessment roll—contents.
	32-3116.	Notice—confirmation—errors.
	32-3117.	Correction of errors—lien.
	32-3118.	Modes of payment of assessment.
	32-3119.	Immediate payment—notice to landowners.
	32-3120.	Contents of notice.
	32-3121.	Installment payment procedure—county treasurer to collect.
	32-3122.	Board provides method of payment.
	32-3123.	Order for issuance of bonds—form and contents.
	32-3124.	Notice in case of payment by special bonds—contents.
	32-3125.	Payment of assessment—redemption by payment.
	32-3126.	Issuance of special bonds to contractor—sale of bonds.
	32-3127.	Payment of interest—retirement.
	32-3128.	Collection of assessments by suit of owner of bonds.

- 32-3129. Auditing and payment of claims and accounts.
32-3130. Estimates of work completed—payment therefor.
32-3131. Disposition of residue of funds.

32-3101. Duty of board to construct roads and levy assessments. (1) Upon proper petition, as hereinafter provided, the board shall cause county roads to be laid out, opened, constructed and improved.

(2) The board shall levy and cause to be collected an assessment upon all parcels of land specifically benefited by the laying out, opening, construction, or improvement for paying the costs thereof.

(3) The assessment shall be a first lien upon the land liable, prior and superior to all other liens and encumbrances.

(4) The board shall provide for the payment of assessments either on the immediate payment plan or by installments.

(5) The board shall issue local improvement district bonds and coupons for each installment.

History: En. Sec. 5-401, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 4 of Chapter 5 of the Highway Code, entitled "Local Improvement Districts."

32-3102. Petition for construction or improvement of road. (1) A petition for laying out, opening, constructing, or improving a county road may be presented to the board by the owners of two-thirds ($2/3$) of the lineal feet of land fronting on the proposed or existing road.

(a) If any such land stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian shall be equivalent to the signature of the owner.

(2) The petition must set forth:

(a) That the petitioners are such owners and that they desire the petitioned action.

(b) The kind and nature of the improvement desired.

(c) The mode of payment of the assessments to be levied for defraying the cost thereof.

(d) The portion of the costs which the district, if formed, will assume and pay.

(i) It must not be less than thirty-five per cent (35%) of the costs, and may be as much as seventy-five per cent (75%) thereof.

History: En. Sec. 5-402, Ch. 197, L. 1965.

32-3103. Resolution of public interest. Upon receipt of the petition, the board shall pass a resolution that the public interest demands the laying out, opening, constructing or improving of the road, or part thereof, described in the resolution. The description shall not include any portion of any road within the boundaries of any city or incorporated town.

History: En. Sec. 5-403, Ch. 197, L. 1965.

32-3104. Proceedings upon receipt of petition. (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or his deputy and the petitioners and all owners upon whose lands special assessments will be levied.

(2) The county clerk shall immediately notify the county road superintendent of the meeting and shall cause a notice thereof to be printed in the newspaper published nearest to the vicinity of the road. The notice shall be published for three (3) consecutive weeks prior to the time of the meeting:

(3) The notice shall state the time and place of the meeting, and in general terms the kind of construction or improvement sought, and the places of beginning, intermediate points and termination.

History: En. Sec. 5-404, Ch. 197, L. 1965.

32-3105. Proceedings at meeting. (1) The petitioners and all owners of land fronting on the road or land owned within two miles on either side of it upon which special assessments will be levied may meet with the superintendent or his duly appointed deputy.

(2) The superintendent or his deputy, or, in their absence one of the landowners present, shall preside. Those present shall elect three as a committee of supervisors; at least one of them shall be a petitioner.

(a) A majority of the owners present and voting shall be sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be included within the local assessment district. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors.

(4) The superintendent or his deputy may administer the oath, or it may be administered by anyone so authorized by law.

History: En. Sec. 5-405, Ch. 197, L. 1965.

32-3106. Duties of committee and road superintendent. (1) The committee and the surveyor or his deputy shall:

(a) Immediately view, examine, and survey the road petitioned for.

(b) Examine and determine the lands which will be specifically benefited by the road and which should be included within the district that is to be assessed.

(c) Ascertain whether any damage or injury to property will be sustained by or in consequence of the making of the road.

(d) Obtain, if possible, without cost the release in writing of each person of his claim for such damage or injury.

(e) Arrange, when necessary, for a release to be given for such amount as may be fair and reasonable.

(2) The road superintendent shall without delay prepare plans and specifications and cost estimates. He shall prepare a plat and description of the local assessment district and a description of the parcels of land included in the district. The valuation of the lands shall be that which appears on the last annual assessment roll of the county for the levying of general taxes.

History: En. Sec. 5-406, Ch. 197, L. 1965.

32-3107. Report of county road superintendent—order creating district. (1) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, he shall make a detailed report.

(a) The report shall state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed.

(2) The whole amount of damages, costs and expenses shall not exceed fifty per cent (50%) of the total assessed valuation of the parcels of land in the district, as determined from the last annual assessment roll of the county. If it does not, the board shall make and enter upon the report an order that the road be made.

(3) That order shall create the local improvement district to be known and designated as local improvement district No. ——— in ——— county, Montana. Copies of the report shall be kept in the offices of the board and road superintendent.

History: En. Sec. 5-407, Ch. 197, L. 1965.

32-3108. Sharing of costs—order of board. The board may enter an agreement to share costs with the district when the petition presented states the proportion which the district will pay. After such an agreement has been made, specifying the amount to be paid by the district and the amount to be paid from county funds, the board shall make an order to that effect on the records of its proceedings.

History: En. Sec. 5-408, Ch. 197, L. 1965.

32-3109. Payment of county's share of expense. The board shall order paid from county funds the share of the county for construction or improvement of the road. However, payment shall not exceed sixty-five per cent (65%) of the cost. This amount shall be a proper charge against the county and shall be paid by the treasurer upon warrants duly drawn as ordered by the board.

History: En. Sec. 5-409, Ch. 197, L. 1965.

32-3110. Formation and boundaries of district. (1) The boundaries of each local assessment district shall be fixed as follows:

(a) The lands extending from the center of the road one-half ($\frac{1}{2}$) mile on each side thereof [measuring one (1) mile in width] shall constitute "Part One" of the district.

(b) The lands embraced within an area one (1) mile wide on each side of Part One shall constitute "Part Two" of the district.

(c) The lands embraced within an area one (1) mile wide on either side of Part Two shall constitute "Part Three" of the district.

(2) Each of the parts shall extend the full length of the proposed road and one mile beyond the terminus unless the committee shall otherwise provide.

History: En. Sec. 5-410, Ch. 197, L.
1965.

32-3111. Assessment of lands in each part—lien. (1) Each separate parcel of land in Part One shall be assessed for its proportion of forty-five per cent (45%) of the whole cost payable by the district.

(2) Each separate parcel of land in Part Two shall be assessed for its proportion of thirty-five per cent (35%) of the cost.

(3) Each separate parcel of land in Part Three shall be assessed for its proportion of twenty per cent (20%) of the cost.

(4) All of the lands in each part shall be subject to a lien for all of the assessments of that part until they have been paid.

History: En. Sec. 5-411, Ch. 197, L.
1965.

32-3112. Method of assessment. (1) The assessments upon the parcels of land in each part shall be made ratably according to the front-foot plan, as follows:

(a) The unit used to determine the proportion of assessment shall be one foot of longitude measured along the road constituting the center of the district and extending latitudinally across the part.

(b) Because units in each part may not be equal, assessment rates for each part shall be determined for eight hundred eighty (880) square feet of surface.

(2) If the areas of the parts are not equal, the rates fixed for parts one, two, and three shall be related to each other as are the numbers forty-five (45), thirty-five (35) and twenty (20), respectively.

History: En. Sec. 5-412, Ch. 197, L.
1965.

32-3113. Appointment of inspector—compensation of inspector and committee. (1) The committee and road superintendent together shall appoint some suitable and competent person other than they to act as an inspector of the work. He shall be upon the work at all times during its progress and inspect the performance thereof. He shall report to and be under the supervision of the superintendent.

(2) He shall be paid for his services as inspector at the rate of five dollars (\$5) per day for the time he is actually engaged thereon.

(3) Each supervisor shall be paid the sum of three dollars (\$3) per day for the time the committee is actually engaged in meeting and acting with the superintendent and in transacting the business of the district. No mileage or other expense money shall be paid.

History: En. Sec. 5-413, Ch. 197, L.
1965.

32-3114. Construction by county—lien. (1) If bids for construction and improvement are rejected by the committee, the district may contract with the board to construct or improve the road.

(2) Roads in districts may be constructed and improved in the first instance at the entire expense of the county, and the county may, as far as practicable, take the place of a private contractor.

(3) When the county has paid for construction and improvements, it shall be recompensed for by the district in accordance with their agreement. If bonds were issued under the installment plan, they shall become the property of the county.

(4) The county shall have the same lien as if the contract had been let to a private contractor.

History: En. Sec. 5-414, Ch. 197, L. 1965.

32-3115. Apportionment of costs—assessment roll—contents. (1) When the order for improvement and construction has been made by the board, the committee and the county assessor shall apportion the estimated cost and expenses to the land in the district.

(2) Within thirty (30) days before the letting of the contract, the assessor shall report to and file with the board and the treasurer an assessment roll in duplicate. It shall contain the description of each parcel of land to be assessed, the amount to be assessed against it, and the name of the owner, if known. In no case shall a mistake in the name of the owner be fatal to the assessment when the description of the land is correct.

History: En. Sec. 5-415, Ch. 197, L. 1965.

32-3116. Notice—confirmation—errors. (1) As soon as the assessment roll is reported and filed, the board shall publish notice for three consecutive weeks in the newspapers in which notice of invitations for bids for the contract was published. The notice shall notify all persons interested that the assessment roll has been filed, and require them to appear at the office of the board at the county seat at a time not less than fifteen (15) days from the date of the last publication of the notice to make objections.

(2) At the time fixed, the board and the assessor shall meet. If no objections have been filed, the board shall make an order confirming the assessment roll. If written objections, properly verified, have been filed, the board shall hear the objections, receiving any testimony from any party involved.

History: En. Sec. 5-416, Ch. 197, L. 1965.

32-3117. Correction of errors—lien. (1) After the hearing, the board shall make such corrections as appear just to apportion the assessment to the benefit to be received. It shall then make and enter an order approving and certifying the assessment roll.

(2) With the aid of the assessor, the board shall levy and assess the amounts on the assessment roll against the parcels of land, or parts thereof.

(3) The assessment so made shall be a first lien on the land described in the assessment roll.

History: En. Sec. 5-417, Ch. 197, L. 1965.

32-3118. Modes of payment of assessment. The petition shall state whether the landowners want to make payment by the mode of "immediate payment" or by payments in installments. Installment payments shall be made in six equal portions, in one (1), two (2), three (3), four (4), five (5), and six (6) years. Payments shall be in the form of bonds which shall draw six per cent (6%) interest per annum from the date they are issued until they are paid.

History: En. Sec. 5-418, Ch. 197, L. 1965.

32-3119. Immediate payment—notice to landowners. (1) If immediate payment is chosen, the board shall deliver the assessment roll to the county clerk as soon as it has been proved and certified. The clerk shall file a duplicate in his office and immediately deliver the other to the treasurer.

(2) The treasurer shall publish a notice for two consecutive weeks in the newspapers in which the notice for bids was advertised and shall mail a copy of the notice to the owners of the land assessed, when the name and post-office address of the owner are known.

(a) Failure to mail notice shall not be fatal to the assessment when it has been published.

History: En. Sec. 5-419, Ch. 197, L. 1965.

32-3120. Contents of notice. The notice shall state the following: (1) The assessment roll has been certified to the treasurer for collection.

(2) Unless payment is made within thirty (30) days from the date of the notice, the payment will become delinquent and shall bear interest at the rate of ten per cent (10 %) per annum.

(3) If the assessment is not paid before it becomes delinquent, a penalty of five per cent (5 %) shall be added, as well as the interest on the annual tax roll for the current year.

(4) The interest and penalty shall be collected, together with such additional charges as are authorized to be charged and collected on other delinquent taxes.

(5) The land assessed shall be sold for the amount of the assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes.

History: En. Sec. 5-420, Ch. 197, L. 1965.

32-3121. Installment payment procedure—county treasurer to collect.

(1) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment roll.

(2) The board and the assessor shall, at the time of levying the assessment, in their order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate of six per cent (6 %) per annum. The order shall specify the number of installments which shall be equal to the number of years for which the bonds may run.

(3) Each year thereafter, the treasurer shall collect one of the installments together with the interest due thereon and the interest due on the installments thereafter to become due.

(4) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment shall be likewise applicable to installment payments.

History: En. Sec. 5-421, Ch. 197, L.
1965.

32-3122. Board provides method of payment. When improvement is ordered upon a petition specifying the method of payment of bonds, the board shall provide that the payment of costs and expenses be made under the provisions of this part [chapter] by bonds charged against the lands in the district. The bonds may be issued to the contractors in payment or costs may be paid by the proceeds of the bonds to be issued and sold as hereinafter provided. In all other cases, the board may so provide.

History: En. Sec. 5-422, Ch. 197, L.
1965.

32-3123. Order for issuance of bonds—form and contents. (1) The board shall make and enter an order authorizing and directing the issuance of bonds payable not more than ten years after the date of issuance.

(2) Each bond shall provide that the holder shall not demand payment until it comes due. It shall bear interest at the rate of six per cent (6 %) per annum, payable annually, and shall have interest coupons for each interest payment attached.

(3) Each bond and coupon shall bear the date of issuance and be made payable to bearer. Each bond shall be signed by the chairman of the board and attested by the county clerk. The seal of the board shall be affixed to each bond.

(4) Bonds shall be issued in denominations of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000).

(5) Each bond shall contain a reference to the district for which it is issued and to the order and record authorizing the issue. It shall state that it is payable only out of the local improvement funds, created by special assessment, and not otherwise.

(6) On its face, each bond shall bear the designation of the district: "Local Improvement District No. _____ in _____ county, Montana."

(7) No bond shall be issued in excess of the costs and expenses of the improvements and construction.

History: En. Sec. 5-423, Ch. 197, L. 1965.

32-3124. Notice in case of payment by special bonds—contents. (1) If the board provides that payment of costs shall be made by the issuance of bonds, the treasurer shall publish notice for two consecutive weeks and mail a copy of the notice in the same manner as is provided with relation to immediate payment.

(2) The notice shall state that:

(a) The assessment roll has been certified to the treasurer for collection.

(b) Unless payment of the whole amount of the assessment is made within thirty (30) days from the date of the notice, special bonds shall be issued against the lands in the district for the payment of the assessment.

(c) If bonds are issued, they will be payable in annual installments with interest thereon at the rate provided in the bonds.

History: En. Sec. 5-424, Ch. 197, L. 1965.

32-3125. Payment of assessment—redemption by payment. (1) At any time within thirty (30) days after notice, the owner may pay the assessment and release and discharge his lands therefrom and from the operation and effect of the bonds.

(2) No bonds shall be issued until twenty (20) days after the expiration of thirty (30) days after notice. No bonds shall be issued for any assessment paid in full within the thirty (30) days.

(3) The owner of lands may redeem them from all liability for assessment at any time after the thirty (30) days by paying all of the assessment remaining unpaid, together with interest and all charges thereon to the date of maturity of the installment next falling due.

(4) All payments shall be made to the treasurer, who shall apply them solely to the costs of the improvement or construction.

History: En. Sec. 5-425, Ch. 197, L. 1965.

32-3126. Issuance of special bonds to contractor—sale of bonds. Bonds ordered sold by the board may be issued to the contractor constructing the improvement in payment. The board may also direct, in the order providing for issuance of the bonds, that they be sold by the treasurer at not less than par value and accrued interest. The proceeds of such bonds shall be applied in payment of the costs and expenses of the improvement.

History: En. Sec. 5-426, Ch. 197, L. 1965.

32-3127. Payment of interest—retirement. (1) The treasurer shall pay the interest on the bonds out of the funds of the district collected on assessments for the bonds.

(2) Whenever there is money in the fund against which the bonds have been issued over and above the amount sufficient for the payment of interest on all unpaid bonds, it shall be used to pay the principal on one or more of the bonds. The treasurer shall call in and pay the bonds in their numerical order.

(3) The call shall be published in the county official newspaper on the day following the maturity date of the installment of assessment, or as soon thereafter as practicable. It shall state that special bonds No. ----- (giving the serial number or numbers of the bonds called) of the district will be paid on the day the next interest coupons become due. Interest upon the bonds thus called shall cease upon that date.

History: En. Sec. 5-427, Ch. 197, L.
1965.

32-3128. Collection of assessments by suit of owner of bonds. (1) If the treasurer fails, neglects, or refuses to pay bonds or to collect promptly any assessments when due, the owner of any bonds may proceed in his own name to collect the assessments and to foreclose the lien in any court of competent jurisdiction. In addition to the amount of the assessments and interest thereon, any such owner shall recover five per cent (5 %) and the costs of his suit.

(2) Any number of holders of bonds for any single district may join as plaintiffs, and any number of owners of land on which the bonds are a lien may be joined as defendants.

(3) Neither the holder nor any owner of any bond shall have any claim against the county through which the bond is issued except for the assessment. His remedy in case of nonpayment shall be confined to the enforcement of the assessments.

(4) A copy of this section shall be plainly written, printed, or engraved on each bond.

History: En. Sec. 5-428, Ch. 197, L.
1965.

32-3129. Auditing and payment of claims and accounts. (1) The committee shall approve and certify all claims and accounts for services and every kind of expense payable from funds of the district.

(2) The county auditor, or the county clerk in any county which has no auditor shall then audit all such claims and accounts. Thereafter he shall issue to the treasurer an order in favor of the person to whom the claim or account is payable to pay it.

(3) Upon presentation of the order by the person to whom it was issued, or his assignee, the treasurer shall pay it from the funds of the district.

History: En. Sec. 5-429, Ch. 197, L.
1965.

32-3130. Estimates of work completed—payment therefor. (1) The surveyor with the approval of the committee shall make estimates of the proportion of the work completed. After auditing, the estimates may

be paid by the treasurer to an amount not exceeding eighty per cent (80 %) during the progress of the work.

(2) If the assessment is payable by installments, the treasurer shall pay the order only from such assessments as shall have been collected prior to the issue of the bonds and from the proceeds of the sales of the bonds after issue.

(3) If the board has ordered that the contractor shall receive bonds in payment, the order for payment shall call for bonds instead of money. The treasurer shall deliver the bonds, dating them the day he delivers them to the contractor. Interest shall run therefrom.

(4) Amounts collected on installment payments of assessments shall be reserved and disbursed by the treasurer for the payment of principal and interest and for the redemption of such bonds.

History: En. Sec. 5-430, Ch. 197, L. 1965.

32-3131. Disposition of residue of funds. (1) After the payment of the whole cost of construction or improvement, any money remaining in the county treasury which belongs to the district shall be refunded on demand. A rebate therefrom shall be made on demand to any person who shall not have paid his assessment in full.

(2) Demand shall be made within two (2) years from the date upon which the assessment became due.

(3) Any such money remaining in the county treasury after the expiration of two years for which no demand has been made shall go into the general funds.

History: En. Sec. 5-431, Ch. 197, L. 1965.

CHAPTER 32—STATE VEHICLE FEES—PAYMENT, EXPIRATION AND DISPOSITION

- Section 32-3201. Time for payment of fees—half fee after July first.
 32-3202. Expiration date.
 32-3203. License not transferable.
 32-3204. Disposition of fees collected by county treasurer.
 32-3205. Deposit of state highway moneys.
 32-3206. Additional tax by municipalities prohibited—exceptions.

32-3201. Time for payment of fees—half fee after July first. A person who owns a motor truck, truck-tractor, trailer, semitrailer, bus, or new passenger motor vehicle and operates it upon the highways of the state shall, at the time he makes application for license as provided in section 53-114, pay any additional fees prescribed in this chapter [chapters 32 to 35 of this title]. A person who makes application for license after the first day of July of any year shall pay one-half ($\frac{1}{2}$) of those fees.

History: En. Sec. 6-101, Ch. 197, L. 1965. were designated as Chapter 6 of the Highway Code, entitled "State Finance." This chapter was designated as Part 1 of Chapter 6, entitled "Fees: Time for Payment, Expiration, Disposition."

Compiler's Note

Chapters 32 to 35, inclusive, of this title

32-3202. Expiration date. The fees paid hereunder for every motor truck, truck-tractor, trailer, semitrailer, bus or automobile shall expire on December 31 of each year. Any certificate, registration, or license issued shall be valid only for the period for which issued.

History: En. Sec. 6-102, Ch. 197, L.
1965.

32-3203. License not transferable. The certificate, registration or license issued hereunder is transferable only upon transfer of title or interest of the legal owner. It is not transferable to another vehicle. However, if a vehicle is destroyed from any cause, the commission may permit transfer to a replacement vehicle. If a smaller vehicle is purchased, there shall be no refund.

History: En. Sec. 6-103, Ch. 197, L.
1965.

32-3204. Disposition of fees collected by county treasurer. At the time of collecting the fees hereinafter provided for, each county treasurer shall retain five per cent (5 %) of the fees so collected for the cost of administration. The remaining ninety-five per cent (95 %) shall be remitted monthly to the state treasurer for deposit to the credit of the commission. Such remittance shall be made on forms furnished to the county treasurer by the commission.

History: En. Sec. 6-104, Ch. 197, L.
1965.

32-3205. Deposit of state highway moneys. (1) Any reference to the state highway fund shall be taken to mean the state highway account in the earmarked revenue fund.

(2) All moneys received for the use of the commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the commission.

(3) All moneys received from the counties and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the commission.

(4) Hereafter, all moneys collected for the commission as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 6-105, Ch. 197, L.
1965.

32-3206. Additional tax by municipalities prohibited — exceptions. Municipalities shall not levy, assess, collect, or charge any additional tax upon any carrier of persons or property for hire, except as provided by law. However, no carrier shall be exempt hereby from paying a parking, curb or ad valorem property tax levied by any municipality.

History: En. Sec. 6-106, Ch. 197, L.
1965.

CHAPTER 33—ADDITIONAL TRUCK, TRAILER AND BUS FEES—SALES
TAX ON VEHICLES—EXCESS WEIGHT PENALTIES

- Section 32-3301. Additional fees on motor trucks and truck-tractors.
32-3302. Additional fees on trailers and semitrailers.
32-3303. Additional fees—gross weight over 42,000 pounds.
32-3304. Additional fees—pole trailers, low-boys, livestock and mixer vehicles.
32-3305. Additional fees—house trailers.
32-3306. Additional fees—certain farm vehicles.
32-3307. Additional fees—buses.
32-3308. Additional fees—quarterly payment.
32-3309. Failure to pay additional fees—penalty.
32-3310. Three unit combination—fees in lieu of gross weight fees otherwise provided—marking.
32-3311. Truck, truck-tractor or bus marked with weight or capacity—markings on farm, logging, livestock, ready-mix concrete, equipment or special vehicles.
32-3312. Additional fees on motor trucks, truck-tractors, trailers and semitrailers from other states.
32-3313. Temporary trip permits showing payment of fees—display.
32-3314. Time for payment of fees by nonresidents.
32-3315. Sales tax on new passenger vehicles.
32-3316. Violation—penalty.
32-3317. Excess weight—penalties.

32-3301. Additional fees on motor trucks and truck-tractors. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each motor truck and truck-tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I

Up to 6,000 lbs.	\$ 6
6,001 lbs. or more, and less than 8,000 lbs.	10
8,001 lbs. or more, and less than 10,000 lbs.	14
10,001 lbs. or more, and less than 12,000 lbs.	16
12,001 lbs. or more, and less than 14,000 lbs.	18
14,001 lbs. or more, and less than 16,000 lbs.	22
16,001 lbs. or more, and less than 18,000 lbs.	30
18,001 lbs. or more, and less than 20,000 lbs.	40
20,001 lbs. or more, and less than 22,000 lbs.	50
22,001 lbs. or more, and less than 24,000 lbs.	75
24,001 lbs. or more, and less than 26,000 lbs.	100
26,001 lbs. or more, and less than 28,000 lbs.	125
28,001 lbs. or more, and less than 30,000 lbs.	165
30,001 lbs. or more, and less than 32,000 lbs.	210
32,001 lbs. or more, and less than 34,000 lbs.	255
34,001 lbs. or more, and less than 36,000 lbs.	300
36,001 lbs. or more, and less than 38,000 lbs.	345
38,001 lbs. or more, and less than 40,000 lbs.	390
40,001 lbs. or more, and less than 42,000 lbs.	435

History: En. Sec. 6-201, Ch. 197, L. 1965. of Chapter 6 of the Highway Code, entitled "Additional Fees, Sales Tax, and Penalty."

Compiler's Note

This chapter was designated as Part 2

32-3302. Additional fees on trailers and semitrailers. In addition to other fees for the licensing of vehicles there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight thereof as set by the licensee in his application, except as otherwise provided, the following fees.

Schedule II

Trailers Other Than House Trailers.

Up to 2,500 lbs. for personal use—Exempt	
Up to 2,500 lbs. for commercial use	\$ 3
2,501 lbs. or more, and less than 6,000 lbs.	4
6,001 lbs. or more, and less than 8,000 lbs.	12
8,001 lbs. or more, and less than 10,000 lbs.	14
10,001 lbs. or more, and less than 12,000 lbs.	16
12,001 lbs. or more, and less than 14,000 lbs.	18
14,001 lbs. or more, and less than 16,000 lbs.	22
16,001 lbs. or more, and less than 18,000 lbs.	30
18,001 lbs. or more, and less than 20,000 lbs.	40
20,001 lbs. or more, and less than 22,000 lbs.	50
22,001 lbs. or more, and less than 24,000 lbs.	75
24,001 lbs. or more, and less than 26,000 lbs.	100
26,001 lbs. or more, and less than 28,000 lbs.	125
28,001 lbs. or more, and less than 30,000 lbs.	165
30,001 lbs. or more, and less than 32,000 lbs.	210
32,001 lbs. or more, and less than 34,000 lbs.	255
34,001 lbs. or more, and less than 36,000 lbs.	300
36,001 lbs. or more, and less than 38,000 lbs.	345
38,001 lbs. or more, and less than 40,000 lbs.	390
40,001 lbs. or more, and less than 42,000 lbs.	435

History: En. Sec. 6-202, Ch. 197, L. 1965.

32-3303. Additional fees—gross weight over 42,000 pounds. In addition to the fees provided for in sections 6-201 and 6-202 [32-3301 and 32-3302], for each motor truck, truck-tractor, trailer, or semitrailer having a gross loaded weight in excess of forty-two thousand (42,000) pounds and within the weight limits specified in section 32-1123, there shall be paid and collected annually a fee of fifty dollars (\$50) for each two thousand (2,000) pounds, or fraction thereof.

History: En. Sec. 6-203, Ch. 197, L. 1965.

32-3304. Additional fees—pole trailers, low-boys, livestock and mixer vehicles. There shall be paid and collected annually a fee equal to seventy-five per cent (75 %) of the fees provided in Schedule I and Schedule II above on pole trailers; trucks, truck-tractors, trailers and semitrailers used exclusively in hauling livestock, logs, and ready-mix concrete; truck-

tractors and low-boy trailers used exclusively in hauling equipment; and truck-tractors drawing or hauling said low-boy trailers.

History: En. Sec. 6-204, Ch. 197, L. 1965.

32-3305. Additional fees—house trailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the licensee in his application, except as otherwise provided, a fee equal to fifty cents (\$.50) for each foot of over-all trailer body length exclusive of bumpers and hitch.

History: En. Sec. 6-205, Ch. 197, L. 1965.

32-3306. Additional fees—certain farm vehicles. Except for motor trucks owned and operated by co-operative associations or co-operative marketing associations, there shall be paid and collected annually a fee equal to twenty per cent (20 %) of the fees provided in Schedule I and Schedule II above on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to be used on the farm, orchard or dairy. However, the minimum fee so paid shall be four dollars (\$4). The terms "trailers and semitrailers" as used herein shall not include farm wagons.

History: En. Sec. 6-206, Ch. 197, L. 1965.

32-3307. Additional fees—buses. There shall be paid and collected annually for each bus or auto stage with the exception of school buses a fee of seven dollars (\$7) per seat, exclusive of the first seven (7) seats and the operator, for the maximum adult seating capacity thereof, except that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule established in section 6-201 [32-3301]. School buses shall not be exempt if they enter charter service.

History: En. Sec. 6-207, Ch. 197, L. 1965.

32-3308. Additional fees—quarterly payment. When the gross weight of any vehicle exceeds twenty-four thousand (24,000) pounds, the additional fees for motor trucks, trailers, tractors, pole trailers, or semitrailers may be purchased for a three months' period for one-fourth ($\frac{1}{4}$) the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar (\$1) shall be charged. The commission is authorized to establish rules and regulations relative to the issuance and

display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

History: En. Sec. 6-208, Ch. 197, L.
1965.

32-3309. Failure to pay additional fees—penalty. No vehicle licensed under the provisions of section 6-208 [32-3308] shall be operated over the public highways unless the owner or operator thereof within ten (10) days after the expiration of any such three-month period shall apply for and pay the required fee for a license for an additional three-month period, or for the remainder of the year. Any person who operates any such vehicle upon the public highway after the expiration of said ten (10) days, shall be guilty of a misdemeanor. In addition he shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation thereof, less the fees for any period or periods of the year already paid. If, within five (5) days thereafter, no license for a full year has been purchased as required aforesaid, the Montana highway patrol, county sheriff or city police shall impound such vehicle in such manner as may be directed for such cases by the supervisor of the Montana highway patrol, until such requirement is met.

History: En. Sec. 6-209, Ch. 197, L.
1965.

32-3310. Three unit combination—fees in lieu of gross weight fees otherwise provided—marking. (1) In lieu of the gross weight fees provided in sections 6-201 to 6-208 [32-3301 to 32-3308] of this chapter, the owner of any motor truck or truck-tractor used on the highways of the state in connection with two (2) trailers or semitrailers at the same time shall register them as a three unit combination in the following manner:

(a) By paying the registration and other fees covering the maximum practical gross vehicle weight for such truck or truck-tractor, but not less than the actual operating gross weight under the provisions of sections 53-114, 53-122, and sections 6-201 and 6-203 [32-3301 and 32-3303] of this chapter.

(b) By registering such trailers in accordance with the provisions of sections 53-114 and 53-112, and by paying the gross vehicle weight fee prescribed for the maximum trailing load in accordance with the provisions of sections 6-202 and 6-203 [32-3302 and 32-3303] of this chapter on the combined gross weight of the two (2) trailers or semitrailers, treating them as if they were a single unit.

(2) Vehicles on which fees are paid in accordance with this section shall have marked thereon the gross weight for which fees have been paid, and shall bear a distinctive mark designated by the commission.

(3) Nothing herein shall be construed as authorizing axle loads in excess to those established by section 32-1123.

History: En. Sec. 6-210, Ch. 197, L. section 53-112 is apparently in error, and the intention may have been to refer to section 53-122.
1965.

Compiler's Note

The reference in paragraph (1) (b) to

32-3311. Truck, truck-tractor or bus marked with weight or capacity—markings on farm, logging, livestock, ready-mix concrete, equipment or

special vehicles. (1) Each truck, truck-tractor or bus shall have permanently marked in clearly visible letters and numbers either the maximum gross weight, or maximum gross weight of the combinations of vehicles, or seating capacity shall be at least two (2) inches in height and on the driver's side of the vehicle.

(2) Any vehicle registered and taxed as a farm, logging, livestock, ready-mix concrete, low-boy or special fee vehicle shall have in addition to the above markings, and equally visible, the words "Farm Vehicle," "Logging Vehicle," "Livestock Vehicle," "Mixer Vehicle," "Equipment Vehicle" or "Special Vehicle."

History: En. Sec. 6-211, Ch. 197, L. 1965.

32-3312. Additional fees on motor trucks, truck-tractors, trailers and semitrailers from other states. (1) In lieu of other fees for the licensing of vehicles, there shall be collected a fee for each motor truck, truck-tractor, trailer, and semitrailer already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee shall be collected upon each entrance of such vehicle into the state, and shall be based upon the number of miles to be traveled in the state as shown in the application of the nonresident operator.

(2) The fee shall be collected for any single vehicle. When any combination of truck, truck-tractor, semitrailer, or trailer totals more than six thousand (6,000) pounds gross weight, the fee shall be collected for each unit in the combination.

(3) The fee shall be:

(a) Five dollars (\$5) for each trip of two hundred (200) miles or less.

(b) Seven dollars and fifty cents (\$7.50) for each trip of over two hundred (200) miles to four hundred (400) miles.

(c) Ten dollars (\$10) for each trip of over four hundred (400) miles.

(4) Such fees shall not apply to any trailer the principal use of which is as temporary or permanent living quarters, or to any vehicle of a carnival which is under contract with a state, county, or district fair association.

History: En. Sec. 6-212, Ch. 197, L. 1965.

32-3313. Temporary trip permits showing payment of fees—display. (1) Temporary trip permits showing payment of the fees provided for in the last section shall be issued under such rules and regulations as may be prescribed by the commission. Such permit shall be displayed in the vehicle for which the fee has been paid at all times while such vehicle is being operated on the highways of this state by posting it where it may be read.

(2) The commission may limit the operation of any such vehicle in this state to a definite period of time.

History: En. Sec. 6-213, Ch. 197, L. 1965.

32-3314. Time for payment of fees by nonresidents. A nonresident owner or operator of a motor truck, truck-tractor, trailer or semitrailer shall, immediately upon arrival in the state, contact the nearest highway patrol office, any commission office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed. All fees collected shall immediately be remitted to the county treasurer.

History: En. Sec. 6-214, Ch. 197, L. 1965.

32-3315. Sales tax on new passenger vehicles. (1) In consideration of the right to use the highways of the state, there shall be imposed a tax upon all sales of new passenger motor vehicles for which a license is sought and an original application for title is made. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) The sales tax shall be:

(a) One and one-half per cent ($1\frac{1}{2}\%$) of the F.O.B. factory list price or F.O.B. port of entry list price, during the first quarter of the year.

(b) One and one-eighth per cent ($1\frac{1}{8}\%$) of the list price during the second quarter of the year.

(c) Three-fourths ($\frac{3}{4}$) of one per cent (1%) during the third quarter of the year.

(d) Three-eighths ($\frac{3}{8}$) of one per cent (1%) during the fourth quarter of the year.

(3) In case the manufacturer or importer fails to furnish the F.O.B. factory list price or F.O.B. port of entry list price, the highway commission may use any published price lists.

(4) The proceeds from this tax should be remitted to the state treasurer every thirty (30) days for credit to the commission.

(5) The new vehicle shall not be subject to any other assessment or taxation during the calendar year in which the original application for title is made whether or not it is in the state on the first day of January of that year.

(6) The tax herein imposed shall not apply to any motor vehicle assessed pursuant to the provisions of section 84-406.

History: En. Sec. 6-215, Ch. 197, L. 1965.

32-3316. Violation—penalty. Any owner or operator of a motor truck, truck-tractor, trailer, semitrailer, bus or automobile who violates any provision of this part [chapter] is guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars (\$300), or by a sentence of not more than sixty (60) days in the county jail, or both.

History: En. Sec. 6-216, Ch. 197, L. 1965.

32-3317. Excess weight—penalties. (1) The operator shall be subject to the penalties stated in this section whenever the gross laden weight of any motor truck, truck-tractor, trailer, or semitrailer operated upon any highway in this state exceeds:

(a) The gross maximum weight marked upon the vehicle pursuant to section 6-211 [32-3311], or

(b) The gross vehicle weight shown on the owner's certificate of registration and tax receipt issued pursuant to section 53-107, or

(c) The gross vehicle weight shown on the gross vehicle weight receipt issued pursuant to section 53-620.

(2) The operator shall:

(a) Immediately unload all cargo in excess of the gross maximum weight for which the vehicle has been taxed.

(b) Immediately thereafter pay to the nearest county treasurer the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight.

(c) Immediately thereafter reload the cargo unloaded.

(3) If the gross maximum weight marked upon the vehicle is less than gross vehicle weight shown on the owner's registration tax receipt or on the gross vehicle weight receipt, and the receipt shows that the proper fee has been paid for the weight stated thereon, there shall be no penalty for improper marking.

History: En. Sec. 6-217, Ch. 197, L. 1965.

CHAPTER 34—FEES FOR DRIVE-AWAY OR TOW-AWAY TRANSPORTERS

Section 32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods.

32-3402. One-trip fee in addition to permit and plate fees, payable quarterly.

32-3403. Disposition of funds collected.

32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1.

32-3405. Fees provided are in lieu of other fees payable—election to pay other fees.

32-3406. Exemptions from fees.

32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods. (1) Every person, firm, partnership or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, foreign countries or provinces, by the drive-away or tow-away methods where such vehicles being driven, towed or transported by the saddle-mount, tow-bar or full-mount methods, or any lawful combination thereof, will be transported over the highways of the state of Montana but once, may annually apply to the registrar of motor vehicles for a permit to use the highways of this state, and shall pay, upon filing such application, a fee of one hundred dollars (\$100). Upon processing of the application, the registrar of motor vehicles shall issue an annual permit to the applicant.

(2) The permit holder may also apply to the registrar of motor vehicles for a sufficient number of distinctive transit plates or devices

showing the permit number for identification of the vehicles being transported by the permit holder, and such plates or devices may be used on any vehicle being driven, towed or transported by and under the control of the permit holder. The registrar of motor vehicles shall collect the additional sum of one dollar (\$1) for each pair of transit plates or devices applied for and issued.

(3) The registrar of motor vehicles shall retain the permit and plate fees to defray costs of administering this act.

(4) The permit and transit plates or devices expire on December 31 of each year.

History: En. Sec. 6-401, Ch. 197, L. 1965. of Chapter 6 of the Highway Code, entitled "Fees for Drive-Away or Tow-Away Transporters." There was no Part 3 of Chapter 6.

Compiler's Note

This chapter was designated as Part 4

32-3402. One-trip fee in addition to permit and plate fees, payable quarterly. In addition to the permit and plate fees, a permit holder shall pay to the registrar of motor vehicles a one-trip fee of five dollars (\$5) per driven vehicle. The fee shall be paid within fifteen (15) days after the end of the calendar quarter upon forms recommended or supplied by the registrar of motor vehicles.

History: En. Sec. 6-402, Ch. 197, L. 1965.

32-3403. Disposition of funds collected. The registrar of motor vehicles shall retain five per cent (5 %) of the funds collected in payment of the trip fees to defray costs of administration. The remaining ninety-five per cent (95 %) shall be remitted, on or before the fifteenth day of each month after collection, to the state treasurer for deposit to the credit of the commission.

History: En. Sec. 6-403, Ch. 197, L. 1965.

32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1. The fees provided for drive-away or tow-away transportation are in addition to any fees payable by for-hire carriers under the provisions of Chapter 1, Title 8, Revised Codes of Montana, 1947, as amended.

History: En. Sec. 6-404, Ch. 197, L. 1965.

32-3405. Fees provided are in lieu of other fees payable—election to pay other fees. The fees provided for drive-away or tow-away transporters are declared to be in consideration of the right to use the highways of the state, and are in lieu of all other fees including those which might be payable, under the provisions of part 2 of this chapter [chapter 33 of this title]. However, any operator may elect to pay the fees payable under the provisions of that part [chapter].

History: En. Sec. 6-405, Ch. 197, L. 1965.

32-3406. Exemptions from fees. The fees provided for drive-away or tow-away transporters shall not apply to:

- (1) Vehicles regularly used in the hauling of vehicles by the truck-away method, or to the vehicles so transported.
- (2) Vehicles operated under dealers' licenses or plates.
- (3) Vehicles registerable under any other provisions of law.
- (4) Any person not issued a drive-away or tow-away permit.

History: En. Sec. 6-406, Ch. 197, L. 1965.

CHAPTER 35—BOND ISSUES FOR STATE TOLL BRIDGES

- Section 32-3501. Toll bridge bond issues—authorization—nature.
 32-3502. Toll bridge bonds—maturity—interest.
 32-3503. Toll bridge bonds—sale—registration.
 32-3504. Toll bridge bonds—proceeds—insufficiency—surplus.
 32-3505. Lien on moneys received from bonds.
 32-3506. Separate funds—depositories.
 32-3507. Construction fund—disposition of surplus.
 32-3508. Revenue fund.
 32-3509. Sinking fund.

32-3501. Toll bridge bond issues—authorization—nature. (1) The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of revenue bonds for the purpose of paying the cost of any toll bridge. Each resolution providing for the issuance of bonds shall set forth and identify the toll bridge for which the bonds are to be issued. The bonds authorized by each resolution shall constitute a separate series identifiable by a series letter or letters.

(2) Each bond issued by the authority shall contain a statement on the face thereof that the state shall not be obligated to pay the same or the interest thereon except from the special fund provided for that purpose. Toll bridge bonds shall be secured only by the revenues from the toll bridge or toll bridges constructed with the proceeds of such bonds.

(3) All such bonds shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities [Chapter 8, Title 87A].

(4) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes with the same effect as though they had remained in office until such delivery.

History: En. Sec. 6-501, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 5 of Chapter 6 of the Highway Code, entitled "Bond Issues for Toll Bridges."

32-3502. Toll bridge bonds—maturity—interest. (1) Toll bridge bonds shall mature at such time or times, not more than twenty (20) years from their date or dates, as may be fixed by the authority's resolution. However, they may be made redeemable before maturity at the option of the authority at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds.

(2) The authority shall determine:

(a) The rate of interest such bonds shall bear, not exceeding six per cent (6 %) per annum.

(b) The time or times of payment of such interest.

(c) The form of the bonds and the interest coupons to be attached thereto.

(d) The manner of executing the bonds and coupons.

(e) The denomination or denominations of the bonds; and

(f) The place or places of payment of principal and interest, which may be at any bank or trust company.

(3) Prior to the preparation of definitive bonds, the authority may issue temporary bonds with or without coupons under the same restrictions as definitive bonds. Such bonds shall be exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

History: En. Sec. 6-502, Ch. 197, L.
1965.

32-3503. Toll bridge bonds—sale—registration. (1) The bonds authorized may be issued and sold from time to time, in such amounts as shall be determined by the authority. The authority may sell said bonds in such manner and for such price as it may determine to be in the best interests of the state. However, no such sale shall be made for less than a price which, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, will show a net return of over six per cent (6 %) per annum to the purchaser upon the amount paid therefor.

(2) The authority may make provision for the registration of toll bridge bonds in the name of the owner as to principal alone or as to both principal and interest.

History: En. Sec. 6-503, Ch. 197, L.
1965.

32-3504. Toll bridge bonds—proceeds—insufficiency—surplus. (1) The proceeds of toll bridge bonds shall be used solely for the payment of the cost of the toll bridge constructed according to law for the payment of which such bonds were issued, and shall be disbursed in such manner and under such restrictions as the authority may provide.

(2) If such proceeds shall be less than the cost of any toll bridge, additional bonds may be issued in like manner to provide the amount of such deficit. Unless otherwise provided in the resolution authorizing the bonds, they shall be deemed to be of the same issue, entitled to payment from the same fund, and of equal preference as the bonds first issued for the same toll bridge.

(3) If such proceeds exceed the cost of any toll bridge, the surplus shall be paid into the fund provided for the payment of principal and interest of such bonds.

History: En. Sec. 6-504, Ch. 197, L.
1965.

32-3505. Lien on moneys received from bonds. There is hereby created and granted a lien in favor of the holders of any bonds issued by the authority for payment of the cost of a particular toll bridge upon all moneys received from any such bonds until such moneys are applied in payment of such bonds.

History: En. Sec. 6-505, Ch. 197, L. 1965.

32-3506. Separate funds—depositories. (1) The authority shall create three (3) separate funds for the bonds of each series issued:

(a) The toll bridge construction fund.

(b) The toll bridge revenue fund.

(c) The toll bridge sinking fund. Each fund shall be identified by the same series letter or letters as the bonds of such series.

(2) The money in the funds shall be deposited in any depository or depositories and secured in such manner as the authority may determine. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish indemnifying bonds or to pledge such securities as may be required by the authority.

History: En. Sec. 6-506, Ch. 197, L. 1965.

32-3507. Construction fund—disposition of surplus. (1) The proceeds of the bonds of each series issued by the authority shall be placed to the credit of the appropriate construction fund which shall at all times be kept segregated from all other funds.

(2) There shall also be credited to the appropriate construction fund:

(a) All interest accrued upon the bonds.

(b) All interest received upon the deposits of moneys in the fund.

(c) All money received by grant or donation from the United States or any other source for the construction of such toll bridge.

(3) The moneys in each construction fund shall be disbursed to pay the cost of the toll bridge for which such fund was created. Any surplus which may remain in any construction fund after providing for the payment and the cost of such toll bridge shall be added to the appropriate sinking fund.

History: En. Sec. 6-507, Ch. 197, L. 1965.

32-3508. Revenue fund. All tolls collected by the engineer under the supervision of the authority and subject to its rules and regulations shall be deposited to the credit of the respective toll bridge revenue fund designated by the authority.

History: En. Sec. 6-508, Ch. 197, L. 1965.

32-3509. Sinking fund. (1) In the resolution authorizing the issuance of each series of bonds, the authority shall provide for paying into the appropriate sinking fund at stated intervals all moneys then remaining in the revenue fund after paying all costs of operation, maintenance and

repair of the toll bridge with respect to which such revenue fund was created.

(2) All moneys in each sinking fund shall be pledged for the payment of and used only for the purpose of paying:

- (a) The interest upon the bonds as it becomes due.
- (b) The necessary fiscal agency charges for paying bonds and interest.
- (c) The principal of the bonds as they fall due.
- (d) Any premiums upon bonds retired by call or purchase.

(3) Prior to the issuance of any bonds in a series the authority may provide by resolution for using the sinking fund or any part of such fund to purchase outstanding bonds payable from such fund. The price to be paid cannot exceed the price, if any, at which such bonds will be payable or redeemable at the next interest date. All bonds redeemed or purchased shall be canceled and no bonds issued in place thereof.

(4) The resolution authorizing any bonds may provide for a reserve for the payment of principal and interest. The moneys in each sinking fund, less such reserve, if not used within a reasonable time for the purchase of bonds for cancellation, shall be used to redeem bonds then subject to redemption at the redemption price then applicable.

History: En. Sec. 6-509, Ch. 197, L. 1965.

CHAPTER 36—COUNTY TAX LEVIES FOR ROAD AND BRIDGE CONSTRUCTION

- Section 32-3601. General road tax.
 32-3602. Special bridge taxes—levy and collection.
 32-3603. Suburban railway to pay county for use of bridge.
 32-3604. Special tax for construction and maintenance.
 32-3605. Additional tax levy for road and bridge construction.

32-3601. General road tax. (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than ten (10) mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders as the board may direct.

(2) This section shall not apply to incorporated cities and towns which, by ordinance, provide for the levy of a like tax for road, street, or alley purposes.

(3) All moneys collected under this section shall belong to the county road fund.

History: En. Sec. 7-101, Ch. 197, L. 1965. were designated as Chapter 7 of the Highway Code, entitled "County Finance."

Compiler's Note This chapter was designated as Part 1 of Chapter 7, entitled "Tax Levies for Road and Bridge Construction."

32-3602. Special bridge taxes—levy and collection. (1) Each board may levy a special tax not to exceed three (3) mills on all taxable property in the county for the purpose of constructing, maintaining and repairing free public bridges.

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the total linear feet of bridges or bridge construction is more than four thousand (4,000) feet and the taxable value of property in that county is four million dollars (\$4,000,000) or less, the board may, if necessary, levy one (1) mill.

(b) In counties where the total linear feet of bridges or bridge construction is more than six thousand (6,000) feet and the taxable value of property in that county is not less than four million dollars (\$4,000,000) nor more than twelve million dollars (\$12,000,000), the board may, if necessary, levy two (2) mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. The money shall be kept as a special bridge fund, subject to the order of the board for use as herein provided, and shall not be transferable to any other fund.

History: En. Sec. 7-102, Ch. 197, L. 1965.

32-3603. Suburban railway to pay county for use of bridge. (1) Before any bridge constructed and maintained by the county in any city or town may be used as a part of any street or suburban railway, the owner of that railway shall pay into the county bridge fund a sum determined by the board which shall not be less than one-fourth ($\frac{1}{4}$) nor more than one-half ($\frac{1}{2}$) of the cost of construction of the bridge.

(2) The railway owner shall also pay such portion of the cost of maintaining the bridge (not less than one-fourth [$\frac{1}{4}$] nor more than one-half [$\frac{1}{2}$]) as is determined by the board during the time the bridge is used by the railway.

History: En. Sec. 7-103, Ch. 197, L. 1965.

32-3604. Special tax for construction and maintenance. Each board may levy a special tax not to exceed five (5) mills on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town.

History: En. Sec. 7-104, Ch. 197, L. 1965.

32-3605. Additional tax levy for road and bridge construction. (1) Each board may make an additional levy upon the taxable property in the county of ten (10) mills or less for constructing public highways and bridges.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form, inserting the number of mills to be levied and the name of the county: "Shall there be an additional levy of ----- mills

upon the taxable property in the county of _____, state of Montana, for the purpose of constructing public highways and bridges?

- ☐ Yes
☐ No."

(3) A majority of the votes cast shall be necessary to permit the additional levy which shall be collected in the same manner as other road taxes.

History: En. Sec. 7-105, Ch. 197, L. 1965.

CHAPTER 37—LOCAL USE OF REGISTRATION AND OTHER VEHICLE FEES

- Section 32-3701. County motor vehicle fund.
 32-3702. Population centers—city road fund—county road fund.
 32-3703. Population centers—use of city road fund.
 32-3704. Counties other than population centers—county road fund—city road fund.
 32-3705. Counties other than population centers—use of city road fund.
 32-3706. Use of county road fund.
 32-3707. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment.

32-3701. County motor vehicle fund. All license and registration fees collected by the treasurer of the county in which any motor vehicle is registered shall be credited to the county motor vehicle fund.

History: En. Sec. 7-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 7 of the Highway Code, entitled "Registration and Other Fees."

32-3702. Population centers—city road fund—county road fund. [1] The county treasurer shall segregate from the county motor vehicle fund, and designate as the "city road fund":

(a) Fifty per cent (50 %) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city.

(i) Having a population of thirty-five thousand (35,000) or more according to the federal census of 1960, or

(ii) Lying within one (1) mile of the limits of an incorporated city having a population of thirty-five thousand (35,000) or more according to the federal census of 1960.

(b) Twenty-five per cent (25 %) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city having a population of ten thousand (10,000) or more according to the federal census of 1960, which city is located in a county which has an area of less than seven hundred and fifty (750) square miles.

(2) The balance of the county motor vehicle fund remaining after segregation of the city road fund shall be transferred to the "county road fund."

History: En. Sec. 7-202, Ch. 197, L. **Compiler's Note**

1965. The compiler has inserted the bracketed designation for subsection (1).

32-3703. Population centers—use of city road fund. (1) At the end of each month, the county treasurer shall pay to the appropriate city treasurer the fees held in the city road fund.

(2) The city treasurer shall hold the fees so paid in a separate "city road fund," which shall be used by the city council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

(3) All such work shall be under the supervision of the county road superintendent, who shall co-operate with the city council in designating the highway or street upon which work is to be done and in selecting the type of pavement to be used.

(4) The cost of supervision by the county surveyor shall not exceed five per cent (5 %) of the cost of the work.

History: En. Sec. 7-203, Ch. 197, L.
1965.

32-3704. Counties other than population centers—county road fund—city road fund. (1) In every county which does not have a city and area populated as provided in section 7-202 of this part [32-3702 of this chapter], the county treasurer shall divide the county motor vehicle fund between a "city road fund" and a "county road fund."

(2) The division shall be in the ratio determined by the board of county commissioners. The board shall determine the ratio by comparing the total number of miles of public streets and highways situated within the limits of incorporated cities and towns with the total number of miles of public streets and highways outside of such corporate limits.

History: En. Sec. 7-204, Ch. 197, L.
1965.

32-3705. Counties other than population centers—use of city road fund. (1) At the end of each month, the county treasurer shall pay to the treasurer of each incorporated city or town such proportion of the city road fund as directed by the board of county commissioners.

(2) The city or town treasurer shall hold the fund so paid in a separate "city road fund," which shall be used by the city or town council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

History: En. Sec. 7-205, Ch. 197, L.
1965.

32-3706. Use of county road fund. The county road fund of each county shall be used for the construction, repair, and maintenance of all public highways within its boundaries which are outside the corporate limits of any city or town and are not either state or federal highways.

History: En. Sec. 7-206, Ch. 197, L.
1965.

32-3707. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in section 53-642 and occasionally moves that equipment on, over, or across the highways of the state, shall not be subject to registration of that equipment or be required to pay the fees and charges provided for in the chapter "State Finance" [chapter 32 to 35 of this title]. Prior to any movement on the highways, however, each piece of equipment shall display an equipment identification plate attached thereto.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the registrar of motor vehicles, together with the payment of a fee of five dollars (\$5). The fees collected under this act shall belong to the county road fund.

(3) The identification plate shall expire on December 31 of each year.

(4) Publicly owned special mobile equipment, and implements of husbandry used exclusively by an owner in the conduct of his own farming operations, are exempt from the provisions of this section.

History: En. Sec. 7-207, Ch. 197, L. 1965.

CHAPTER 38—COUNTY ROAD AND BRIDGE BONDS

Section 32-3801. County commissioners may issue bonds.

32-3802. Negotiations for refunding.

32-3803. Single purpose highway—bridge.

32-3804. Limitation on amount of bonds—issuance in excess of limitations void.

32-3805. Term—power to redeem—maximum interest.

32-3806. Form of bonds.

32-3801. County commissioners may issue bonds. (1) Each board may issue, negotiate and sell coupon bonds on the credit of the county:

(a) To construct or improve, or acquire rights of way for public highways; or bridges.

(b) To refund, pay and redeem optional, redeemable or maturing highway or bridge bonds when there are not sufficient funds available and it is deemed in the best interests of the county to refund the bonds.

(2) The value of the bonds issued and all other outstanding indebtedness of the county shall not exceed five per cent (5 %) of the value of the taxable property within the county as ascertained by the last preceding general assessment.

(3) The bonds shall be issued as provided in section 16-2008.

History: En. Sec. 7-301, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 3 of Chapter 7 of the Highway Code, entitled "Bonds."

32-3802. Negotiations for refunding. (1) Whenever the total indebtedness of a county exceeds the constitutional limitation of five per cent (5 %) of the value of the taxable property therein and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) Negotiate with the bondholders for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof.

(b) Enter into such agreement or agreements.

(c) Issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series and each series may be either amortization or serial bonds.

(2) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds.

History: En. Sec. 7-302, Ch. 197, L. 1965.

32-3803. Single purpose highway—bridge. (1) It shall be deemed a single purpose to:

(a) Acquire a right of way for and construct a public highway including any bridge or bridges thereon.

(b) Contribute to the cost of a federal-aid bridge.

(c) Contribute to the cost of a federal-aid highway project on a highway leading to a federal-aid bridge.

(2) Construction of two or more bridges not forming a part of the same public highway shall be deemed separate purposes.

(3) Nothing contained in this section shall be construed as amending or repealing sections 16-1163—16-1165.

History: En. Sec. 7-303, Ch. 197, L. 1965.

32-3804. Limitation on amount of bonds—issuance in excess of limitations void. (1) Except as otherwise provided hereafter and in section 16-2010, no county shall issue bonds which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per cent (2½ %) of the value of the taxable property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per cent (2½ %), but will not exceed five per cent (5 %) of the value of such taxable property, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) All bonds issued by any county in excess of the limitations herein fixed shall be null and void, except that the limitations shall not apply to refunding bonds issued to pay or retire county bonds lawfully issued prior to January 1, 1932.

(4) The words "value of the taxable property" are used in this section in the same sense as in section 5 of article 13 of the constitution and shall be given the same meaning and construction.

History: En. Sec. 7-304, Ch. 197, L. 1965.

32-3805. Term—power to redeem—maximum interest. (1) No bonds issued under subsection (1) of section 7-301 of this part [32-3801] shall be for a longer term than twenty (20) years.

(2) No bond issued under subsection (2) of that section shall be issued for a term longer than ten (10) years, except that:

(a) If the unexpired term of the bonds to be refunded is greater than ten (10) years, the refunding bonds may be issued for the unexpired term; or

(b) If the ten (10) year term requires an annual tax levy for payment of the refunding bonds which exceeds ten (10) mills on all property subject to taxation, the term may be so extended as to reduce the annual levy to ten (10) mills. In no event shall the term exceed twenty (20) years.

(3) All bonds issued for a term longer than five (5) years shall be redeemable at the option of the county five (5) years after the date of issue and on any payment due date thereafter before maturity. This statement shall appear on the face of each bond.

(4) The maximum rate of interest which any bonds shall bear is six per cent (6 %) per annum. Interest shall be payable semiannually.

History: En. Sec. 7-305, Ch. 197, L. 1965.

section to subsection (2) of section 32-3801 may be in error. It may have been intended to refer to paragraph (1) (b) of section 32-3801.

Compiler's Note

The reference in subsection (2) of this

32-3806. Form of bonds. (1) All bonds issued by any county shall be either amortization bonds or serial bonds. Amortization bonds shall be issued in preference to serial bonds.

(2) The term "amortization bonds" means that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable. The part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date. However, the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

(3) The term "serial bonds" means a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds becoming due and payable each year. The amount to be paid and redeemed each year shall be determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year will be the same. The amount of installments becoming due and payable the first year, or

the first and second years, may vary from the others to the extent which results from fixing the amounts of each bond of the other installments at one hundred dollars (\$100), five hundred dollars (\$500) or one thousand dollars (\$1,000) as may be determined by the board.

History: En. Sec. 7-305, Ch. 197, L. 1965.

CHAPTER 39—ACQUISITION AND DISPOSITION OF PROPERTY BY STATE

- Section 32-3901. Rights acquired by public in highway.
 32-3902. General power of commission to acquire interests in property.
 32-3903. Purposes for which property acquired.
 32-3904. Exercise of right of eminent domain—presumption.
 32-3905. Acquisition of whole parcel—sale of excess.
 32-3906. Power to acquire for future.
 32-3907. Road building materials.
 32-3908. No compensation in certain cases—exceptions.
 32-3909. Exchange of interests in real property.
 32-3910. Sale of interests in real property.
 32-3911. Conduct of sale.
 32-3912. Option of original owner or successor in interest to purchase at sale price.
 32-3913. Private sale if no bid or offer.
 32-3914. Sale of personal property—maps, books, other printed matter.
 32-3915. Conveyances—execution—contents.
 32-3916. Rendering irrigable lands unusable—unpaid construction costs.
 32-3917. Abandonment or vacation of federal-aid or state highways.
 32-3918. Highway crossing railroad, canal, or ditch.
 32-3919. Rights of way for toll bridges.
 32-3920. Acquisition of property for controlled access facility.

32-3901. Rights acquired by public in highway. By taking or accepting land for a highway, the public may acquire either a fee simple or any lesser estate or interest.

History: En. Sec. 8-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 39 and 40 of this title were designated as Chapter 8 of the Highway

Code, entitled "Acquisition and Disposition of Property and Interests Therein." This chapter was designated as Part 1 of Chapter 8, entitled "Acquisition and Disposition by State."

32-3902. General power of commission to acquire interests in property. Notwithstanding any other provision of law, the commission may acquire by purchase or any other lawful manner any lands or other real property, excluding oil, gas and mineral rights, which it deems reasonably necessary for present or future highway purposes. The commission may acquire a fee simple or any lesser estate or interest.

History: En. Sec. 8-102, Ch. 197, L. 1965.

32-3903. Purposes for which property acquired. The acquisition of lands or other property, or any interest therein, for present or future highway purposes includes, but is not limited to any of the following purposes: (1) For rights of way, including those necessary for highways within cities.

(2) For exchanging lands or other property or any interest therein for other such lands or interests for rights of way or other authorized purposes. The right of eminent domain shall not be exercised for this purpose.

(3) For deposits of road building materials, including rock, gravel, sand, and earth for reasonably foreseeable future road building purposes and uses. The right of eminent domain shall not be exercised to acquire any such deposits which constitute a component part of an existing private business enterprise.

(4) For offices, weighing stations, shops, storage yards, buildings, rest areas, informational sites, or communication facilities.

(5) For parks adjoining or near any highway.

(6) For the culture and support of trees or shrubs which benefit any highway by aiding in the maintenance and preservation of the roadbed.

(7) For drainage in connection with any highway.

(8) For the maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public.

(9) For the construction and maintenance of stock lanes or trails.

(10) For the construction and maintenance or replacement of private or public drainage systems, or natural water or drainage courses made necessary by highway construction.

(11) For providing land or other real property easements or rights of way for necessary relocation of existing utilities, utility easements, or other easements for facilities or purposes then in place or in effect upon a proposed right of way.

History: En. Sec. 8-103, Ch. 197, L. 1965.

32-3904. Exercise of right of eminent domain—presumption. (1) Whenever the commission cannot acquire lands or other property or interests therein at a price or cost which it deems reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landholders.

(2) It shall not so direct the attorney general or any county attorney until it adopts a resolution declaring that:

(a) Public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in section 8-103 [32-3903].

(b) The interest described in the resolution and sought to be condemned is necessary for the highway or improvement.

(c) The highway or improvement is planned and located in a manner which will be compatible with the greatest public good and the least private injury.

(3) The resolution shall create and establish a disputable presumption:

(a) Of the public necessity of the proposed highway or improvement.

(b) That the taking of the interest sought is necessary therefor.

(c) That the proposed highway or improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

History: En. Sec. 8-104, Ch. 197, L. 1965.

32-3905. Acquisition of whole parcel—sale of excess. (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes, leaving the remainder in such shape or condition as to be of little market value, or to give rise to claims or litigation over severance or other damage, the commission may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in such a shape or size as to come within the provisions of section 11-614, the commission shall prepare and file the required plat in the office of the county clerk and recorder.

History: En. Sec. 8-105, Ch. 197, L. 1965.

32-3906. Power to acquire for future. (1) The power conferred by this chapter [chapters 39 and 40 of this title] to acquire interests in lands or other real property includes power to acquire for reasonably foreseeable future needs.

(2) The commission may lease unused portions of any lands or other real property which are held for highway purposes and interstate highway rights of way which are not presently needed for highway purposes on such terms and conditions as it may fix. The commission may repair, maintain, and care for such property in order to secure rent therefrom.

(3) All rent received shall be deposited to the credit of the commission.

History: En. Sec. 8-106, Ch. 197, L. 1965.

32-3907. Road building materials. (1) Any right of way or easement acquired by the commission for construction, operation, repair, reconstruction, or maintenance of highways shall include, among others, the right to use, remove, relocate, redistribute, or otherwise dispose of any and all gravel and other road-building materials found or located within the boundaries of the right of way or easement.

(2) For the purposes of this chapter [chapters 39 and 40 of this title], such gravel or materials shall be deemed to be real property and not minerals.

History: En. Sec. 8-107, Ch. 197, L. 1965.

32-3908. No compensation in certain cases—exceptions. (1) Whenever the commission files a description and plan as provided in section 4-113 [32-2413] of this code, no consideration, allowance or assessment of values or compensation shall be made in the purchase or condemnation of any buildings or improvements or subdivisions placed or erected on the land covered by the plan after the filing.

(2) The establishment of the highway location covered by the description and plan shall be ineffective one year after filing if no action to condemn or acquire the property has been commenced.

(3) Nothing in this section or in section 4-113 [32-2413] shall apply to crops or similar improvements planted on the lands described. They shall be governed by the provisions of section 93-9913.

History: En. Sec. 8-108, Ch. 197, L. 1965.

32-3909. Exchange of interests in real property. (1) The commission may determine that any interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of any highway. It may then exchange any such interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The commission may establish the manner and terms and conditions for such exchange.

(2) The owner from whom such interest was originally acquired by the state, or his successor in interest, shall have the right to require the commission to offer such land for sale in the manner set forth in sections 8-110 and 8-111 [32-3910 and 32-3911]. The commission shall notify such owner or successor in interest of its intention to exchange such interest. The owner shall make his demand for sale by registered mail to the commission within ten (10) days after receipt of notice from the commission.

History: En. Sec. 8-109, Ch. 197, L. 1965.

32-3910. Sale of interests in real property. The commission may sell any interest in real property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of any highway. If the interest is reasonably of a value in excess of one hundred dollars (\$100), sale shall be made to the highest bidder at public auction or by sealed bids as the commission may decide. The sale shall be conducted as provided in section 8-111 [32-3911].

History: En. Sec. 8-110, Ch. 197, L. 1965.

32-3911. Conduct of sale. (1) The commission shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for two (2) successive weeks. Sale shall be held at the office of the commission at the capitol.

(2) Before any sale of any interest having a value in excess of one hundred dollars (\$100), the commission shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) No sale shall be made of any interest unless it has been appraised within three (3) months prior to the date of the sale. No sale shall be made for less than ninety per cent (90%) of the appraised value.

(4) No title to any interest shall pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the commission.

History: En. Sec. 8-111, Ch. 197, L. 1965.

32-3912. Option of original owner or successor in interest to purchase at sale price. The owner from whom the interest was originally acquired, or his successor in interest, shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. The offer shall be sent to the commission by registered mail within ten (10) days from the date of the sale.

History: En. Sec. 8-112, Ch. 197, L. 1965.

32-3913. Private sale if no bid or offer. (1) If, after proper notice is published, the commission receives neither bid at public sale nor offer from the original owner of his successor in interest, it may at any time thereafter sell the interest at private sale. At such sale, the commission may accept as the purchase price an amount of money not less than ninety per cent (90%) of the appraised value.

(2) No title to any interest shall pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the commission.

History: En. Sec. 8-113, Ch. 197, L. 1965.

32-3914. Sale of personal property—maps, books, other printed matter. (1) The commission may sell at public or private sale, as it may determine, any interest in personal property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of any highway.

(2) The commission may sell at public or private sale, as it may determine, maps, books, pamphlets, or other printed matter, prepared or acquired by the commission. The commission may sell copies of any highway records to the public and may set reasonable prices therefor.

(3) The proceeds from sales made under the provisions of this section shall be paid into the state treasury to the credit of the commission.

History: En. Sec. 8-114, Ch. 197, L. 1965.

32-3915. Conveyances—execution—contents. (1) Any land or interest therein sold by the commission shall be conveyed only when full payment has been made therefor. It shall be conveyed by a deed or patent of conveyance without covenants which recites that it was issued under the provisions of this part [chapter].

(2) The deed or patent shall contain a reservation of easements for rights of way for the benefit of the United States, and all other reservations to which the land conveyed may be subject.

(3) The deed or patent shall be signed by the governor, or, in case of his absence or inability, the lieutenant governor. It shall be attested by the secretary of state and have attached the great seal of the state. It need not be acknowledged.

History: En. Sec. 8-115, Ch. 197, L. 1965.

32-3916. Rendering irrigable lands unusable—unpaid construction costs. Whenever the commission acquires irrigable land for highway purposes, or so acquires land as to render other irrigable land unusable for irrigation, it shall pay to the owner of the irrigation or drainage project, in addition to other sums allowed by law, a proportionate share of the unpaid construction costs of the project or drainage district.

History: En. Sec. 8-116, Ch. 197, L. 1965.

32-3917. Abandonment or vacation of federal-aid or state highways. Every federal-aid or state highway once established must continue until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by a proper order of the commission.

History: En. Sec. 8-117, Ch. 197, L. 1965.

32-3918. Highway crossing railroad, canal, or ditch. (1) Whenever any federal-aid or state highway is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must, at their expense, so prepare the railroad, canal, or ditch that the highway may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-118, Ch. 197, L. 1965.

32-3919. Rights of way for toll bridges. (1) The authority may acquire by purchase or otherwise necessary rights of way for any toll bridge and approaches. It may exercise the right of eminent domain in the name of the state for those purposes.

(2) Whenever the authority cannot acquire by purchase any right of way which it deems necessary, it may direct the attorney general or any county attorney to procure it by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landowners,

(3) A right of way is hereby given, dedicated, and set apart for toll bridges and approaches thereto, through, over, upon, or across:

(a) Any property of the state, including highways.

(b) Any county road.

(c) Any street or alley.

Acquisition and use for toll bridge and approach purposes shall be deemed a superior and more necessary public use than the public use or purpose to which the highway, road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-119, Ch. 197, L. 1965.

32-3920. Acquisition of property for controlled access facility. (1) The highway authorities of the state, counties, incorporated cities and towns, respectively, or in co-operation one with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(2) A right of way is hereby given, dedicated, and set apart for controlled access highways or controlled access facilities through, over, upon, or across any county road and any street or alley intersecting a controlled access highway. Acquisition of any county road, street, or alley for use as a controlled access highway or controlled access facility shall be deemed a superior and more necessary public use and purpose than the public use or purpose to which such road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-120, Ch. 197, L. 1965.

CHAPTER 40—ACQUISITION AND DISPOSITION OF PROPERTY BY COUNTY

- Section 32-4001. Rights of way for county roads.
 32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road.
 32-4003. Contents of petition.
 32-4004. Investigation of petition—notice.
 32-4005. Opening of road—survey.
 32-4006. Determination of damages—declaration as road.
 32-4007. Award of damages deemed rejected—proceedings to secure right of way.
 32-4008. Damages and expenses to be paid out of county road fund.
 32-4009. Change of road upon petition.
 32-4010. Notice to district supervisor of opening of county road.
 32-4011. Record of opening or changing road.
 32-4012. Deeds and judgments for right of way—recording.
 32-4013. County road crossing railroad, canal or ditch.
 32-4014. Abandonment or vacation of county roads.
 32-4015. Stock lanes.
 32-4016. Board to transfer responsibility for right of way.
 32-4017. Acquisition of property for public ferries and wharves.
 32-4018. Acquisition of property for controlled access facility.

32-4001. Rights of way for county roads. (1) Each board shall acquire rights of way for county roads and discontinue or abandon them only upon proper petition therefor.

(2) By taking or accepting interests in real property for county roads, the public acquires only the right of way and the incidents necessary to enjoying and maintaining it.

History: En. Sec. 8-201, Ch. 197, L. 1965. of Chapter 8 of the Highway Code, entitled "Acquisition and Disposition by County."

Compiler's Note

This chapter was designated as Part 2

32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road. Any ten, or a majority, of the freeholders of a road district, taxable therein for road purposes, may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district. If the county is not divided into districts the entire county shall be one road district. When the road petitioned for is on the dividing line between two counties, the same procedure must be followed, except that a copy of the petition must be presented to each board. The two boards shall act jointly.

History: En. Sec. 8-202, Ch. 197, L. 1965.

32-4003. Contents of petition. The petition must set forth: (1) The particular road or roads to be opened, established, constructed, changed, discontinued, or abandoned.

(2) The general route thereof.

(3) The lands and owners affected.

(4) Whether the owners who can be found consent thereto.

(5) Where consent is not given, the probable cost of the right of way.

(6) The necessity for, and advantage of, the petitioned action.

History: En. Sec. 8-203, Ch. 197, L. 1965.

32-4004. Investigation of petition—notice. (1) At its next regular or special meeting, or in any case, at a date within thirty (30) days after filing of any petition, the board shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of the petition. The investigation shall be sufficient to properly determine the merits or demerits of the petition.

(2) No more than one member of the board and the county surveyor shall make the investigation. After considering the petition and the results of the investigation, the board shall make an entry of its decision on the minutes.

(3) Within ten (10) days thereafter, the board shall cause notice of its decision to be sent by certified mail to all owners of land abutting on the road petitioned for. The owners shall be those listed on the last county assessment roll.

History: En. Sec. 8-204, Ch. 197, L. 1965.

32-4005. Opening of road—survey. If the petition is for the opening of a county road, and the board grants the prayer, ordering the road opened, it shall proceed at once to have it opened to the public and declare it to be a county road. The board may order the county surveyor, or some other competent surveyor, if the county surveyor is incompetent to survey and plat the road. He shall file his fieldnotes with the county clerk and recorder. The surveyor shall receive seven dollars (\$7) per day and actual traveling expenses.

History: En. Sec. 8-205, Ch. 197, L. 1965.

32-4006. Determination of damages—declaration as road. (1) Whenever the board makes an order establishing or changing any road, it must find the amount of damages sustained by each owner or claimant of lands or improvements thereon affected by the road. Damages shall be paid to the owner or claimant, if known, upon his showing or establishing his right or title to the lands or improvements and furnishing proper deeds and releases.

(2) Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any, shall be the amount of damages awarded.

(3) If all awards are accepted, the board shall declare the road a county road and open it.

History: En. Sec. 8-206, Ch. 197, L. 1965.

32-4007. Award of damages deemed rejected—proceedings to secure right of way. (1) If any award of damages provided for in section 8-206 [32-4006] is not accepted within twenty (20) days after the date of the award, it shall be deemed rejected by the owner. The board shall, by order, direct that proceedings to procure the right of way be instituted under sections 93-9901—93-9926 by the county attorney against all nonaccepting landowners.

(2) Such proceedings shall in no way be affected or invalidated by the failure of the board to give any notice or do any act provided for in this part [chapter]. Failure to give any such notice shall not be considered by any court as a defense in any proceedings for procuring right of way.

(3) However, in such proceedings it shall be made to appear that the board shall have declared by resolution that the right of way was necessary and desirable.

History: En. Sec. 8-207, Ch. 197, L. 1965.

32-4008. Damages and expenses to be paid out of county road fund. All awards of damages estimated by the board or made by the proper court and all expenses, including those of the members of the board and their per diem authorized by section 16-912, shall be paid out of the county road fund on the order of the board.

History: En. Sec. 8-208, Ch. 197, L. 1965.

32-4009. Change of road upon petition. (1) A majority of the freeholders or owners residing on any county road, or portion thereof, may petition the board in writing to so change the road or portion as to run on subdivision or section lines.

(2) The board shall investigate in the same manner as provided in section 8-204 [32-4004]. After investigation, the board may order the making of the change if it can be done without material damage,

injury, or serious inconvenience to the public customarily using the road or portion.

(3) Those petitioning for the change shall bear all or such portion of the cost and expense of making it as the board may order.

History: En. Sec. 8-209, Ch. 197, L.
1965.

32-4010. Notice to district supervisor of opening of county road. When a county road is to be opened, established, constructed, changed, abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish him with a certified copy of the order of the board.

History: En. Sec. 8-210, Ch. 197, L.
1965.

32-4011. Record of opening or changing road. When a county road is opened or changed, the findings of the board, the plat fieldnotes, and the report of the surveyor shall be recorded in the office of the county clerk in a book kept for that purpose.

History: En. Sec. 8-211, Ch. 197, L.
1965.

32-4012. Deeds and judgments for right of way—recording. (1) When a right of way is voluntarily given or purchased, an instrument in writing, conveying the right of way and incidents thereto, must be signed and acknowledged by the person making it. It must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right of way is condemned, a certified copy of the judgment of the court must be made. It must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments shall particularly describe the land.
History: En. Sec. 8-212, Ch. 197, L.
1965.

32-4013. County road crossing railroad, canal or ditch. (1) Whenever any county road is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must at their expense, so prepare the railroad, canal, or ditch that the road may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-213, Ch. 197, L.
1965.

32-4014. Abandonment or vacation of county roads. All county roads once established must continue to be county roads until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by the order of the board. No order to abandon any county road shall be valid unless preceded by notice and public hearing.

History: En. Sec. 8-214, Ch. 197, L.
1965.

32-4015. Stock lanes. [1] Upon presentation of a proper petition, each board may establish, alter, or vacate stock lanes when it deems it expedient and necessary for the convenience of the public and for the convenience of travel on roads now established. Any lane may adjoin and parallel a county road and shall be described in the petition for creation and in the order of the board creating it.

(2) A stock lane is a county road established and maintained for the driving and travel of livestock. It shall be not less than sixty (60) feet wide. The width shall be determined by the board in the order creating it.

(3) The provisions of sections 8-201—8-214 of this part [32-4001 to 32-4014 of this chapter] and the general laws relating to establishing, altering, and vacating county roads including the exercise of the right of eminent domain shall apply to stock lanes. References in all petitions, orders, and proceedings shall be to “stock lanes” in order to differentiate them from other highways.

History: En. Sec. 8-215, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed designation for subsection (1).

32-4016. Board to transfer responsibility for right of way. Each board shall transfer its control over, and responsibility for, any county road when the commission notifies it that: (1) A federal or state highway has been established and definitely located over a county road.

(2) Funds are available for immediate construction of the highway.

(3) The highway will be improved and maintained by the commission.

History: En. Sec. 8-216, Ch. 197, L. 1965.

32-4017. Acquisition of property for public ferries and wharves. (1) Upon the proper showing, as provided in section 16-1116, each board may construct or acquire ferries by condemnation or purchase. Each board may also acquire all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry.

(2) Each board may acquire real property for these purposes under the provisions of sections 93-9901—93-9926.

(3) No board shall establish or maintain a county ferry or wharf with a landing-place in any incorporated city or town which, by its charter, is vested with the power to build and regulate ferries, wharves, or landings at the feet of streets terminating at a river or harbor.

History: En. Sec. 8-217, Ch. 197, L. 1965.

32-4018. Acquisition of property for controlled access facility. The highway authorities of the state, counties, incorporated cities, and towns, respectively or in co-operation each with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired

by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

History: En. Sec. 8-218, Ch. 197, L. 1965.

CHAPTER 41—CONTRACTS OF STATE HIGHWAY COMMISSION

- Section 32-4101. Letting of contracts on state and federal-aid highways.
 32-4102. Competitive bidding.
 32-4103. Bidder's security—contractor's bond.

32-4101. Letting of contracts on state and federal-aid highways. All contracts for work on state and federal-aid highways, including portions in cities and towns, and all contracts entered into under section 11-1023 shall be let by the commission. Except as otherwise specifically provided, the commission may enter such types of contracts and upon such terms as it may decide. All contracts shall meet the requirements of sections 41-701—41-703. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-101, Ch. 197, L. 1965.

designated as Chapter 9 of the Highway Code, entitled "Contracts." This chapter was designated as Part 1 of Chapter 9, entitled "Contracts of Commission."

Compiler's Note

Chapters 41 and 42 of this title were

32-4102. Competitive bidding. (1) When the estimated cost of any work exceeds one thousand dollars (\$1,000), the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules and regulations. However, except when prohibited by federal law, the commission must make awards and contracts in accordance with the provisions of sections 82-1924 and 82-1926.

(2) If the commission finds that such work may be done in some more efficient manner, it need not let the contract by competitive bidding.

(3) If, on any highway construction work financed in whole or in part by federal funds, the United States secretary of commerce affirmatively finds that under the circumstances relating to a particular project some method other than competitive bidding is in the public interest, the commission may enter into contracts with any board of county commissioners. Such contracts may authorize each county to acquire rights of way for, survey, and construct farm to market, secondary, or feeder roads within the county by force account, unit price, or otherwise, as may be agreed by the commission and each board.

History: En. Sec. 9-102, Ch. 197, L. 1965.

32-4103. Bidder's security—contractor's bond. (1) Whenever the commission calls for competitive bidding, each bidder shall meet all requirements of section 6-501 [R. C. M., 1947].

(2) Every contractor awarded a contract by the commission shall meet all requirements set forth in sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the commission, a contract shall not be completed until the commission, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-103, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed references to R. C. M., 1947.

CHAPTER 42—CONTRACTS OF COUNTIES AND LOCAL IMPROVEMENT DISTRICTS

- Section 32-4201. Contracts for county roads.
 32-4202. Bids on county road contracts—award of contract.
 32-4203. County road contractors to furnish bonds.
 32-4204. Letting of contract for bridge.
 32-4205. Letting of contract by local improvement district—bids.
 32-4206. Improvement district contract—award.
 32-4207. Execution of contract by board—limit on liability.

32-4201. Contracts for county roads. (1) When the estimated cost of opening, establishing, constructing, changing, abandoning, discontinuing, or widening a county road exceeds one thousand dollars (\$1,000), the work may, in the discretion of the board, be let by contract, unless the board shall find that such work may be otherwise done at less cost.

(2) Before any such contract shall be let, the board shall advertise for bids at least once a week for two (2) consecutive weeks, in a newspaper of general circulation in the county.

History: En. Sec. 9-201, Ch. 197, L. 1965.

of Chapter 9 of the Highway Code, entitled "Contracts of Counties and Local Improvement Districts."

Compiler's Note

This chapter was designated as Part 2

32-4202. Bids on county road contracts—award of contract. Each bidder shall comply with the requirements of section 6-501 [R. C. M., 1947]. The contract shall be awarded to the lowest responsible bidder in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926, and the board may reserve the right to reject any and all bids. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-202, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4203. County road contractors to furnish bonds. Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-203, Ch. 197, L. 1965.

32-4204. Letting of contract for bridge. (1) All bids for construction or repair of bridges shall meet these requirements:

(a) If the commission has adopted or established a standard plan and specifications, the bids must be submitted thereon.

(b) All bids must be sealed. Each bidder shall meet the requirements of section 6-501 [R. C. M., 1947].

(2) The board may reject any and all bids. If a contract is awarded, the board shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-204, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed references to R. C. M., 1947.

32-4205. Letting of contract by local improvement district—bids.

(1) After the board has made the order creating and establishing the local improvement district, the local committee of supervisors shall advertise for bids. The advertisement shall state generally the work to be done and shall refer to the plans and specifications. It shall also fix the time for opening bids in the office of the board. Each bidder shall meet the requirements of section 6-501 [R. C. M., 1947].

(2) At that time, the committee shall open all bids. It may reject all of them and readvertise for bids. No contract shall be awarded at a greater sum than the estimate of cost provided for in part 4 of chapter 5 of this code [chapter 31 of this title].

History: En. Sec. 9-205, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4206. Improvement district contract—award. (1) If the committee awards a contract, it shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Before entering upon performance of the contract, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the committee, a contract shall not be completed until the committee, while formally convened, affirmatively accepts all of the work thereunder.

(3) Partial payments may be provided for in the contract, and paid when certified by the county surveyor and committee.

History: En. Sec. 9-206, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4207. Execution of contract by board—limit on liability. The contract shall be executed in the name of and on behalf of the county by the board and attested with the county seal for the use and benefit of the local improvement district. The county shall not be subject to any claim or liability in an amount greater than that agreed upon with the district in the order fixing the amount chargeable to the county.

History: En. Sec. 9-207, Ch. 197, L. 1965.

CHAPTER 43—CONTROL OF ACCESS

- Section 32-4301. Policy.
 32-4302. Definitions.
 32-4303. Designation as controlled access highway—resolution—findings.
 32-4304. Designation as controlled access highway—petition from city or county.
 32-4305. Powers of highway authorities.
 32-4306. Design of controlled access facility—entrance and exit restricted.
 32-4307. New and existing facilities—elimination of grade crossings.
 32-4308. Existing roads and streets as service roads.
 32-4309. Marking of controlled access highway or facility with signs.
 32-4310. Commercial enterprise or structure prohibited.
 32-4311. Violations—penalties.

32-4301. Policy. The legislative assembly declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to: (1) Highways included by the bureau of public roads in the national system of interstate highways.

(2) Throughways and intersections with throughways.

(3) Such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter.

History: En. Sec. 10-101, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Chapter 10 of the Highway Code, entitled "Control of Access."

32-4302. Definitions. When used in this chapter: (1) "Interstate highway" means any highway now included or which shall hereafter be included as a part of the National System of Interstate Highways.

(2) "Controlled access highway" means all portions of any interstate highway, throughway, or throughway intersection which the commission shall determine and designate for through traffic, or other federal-aid or state highway over, from or to which owners or occupants of abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view. It shall also mean those portions of spurs to the interstate highway system which the commission shall determine and designate as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(3) "Controlled access facility" means and includes all streets, alleys, public roads, private roads, and ways of passage intersecting any controlled access highway and all real property contiguous to the right of way of any controlled access highway.

(4) "Existing highway" means and includes all highways, roads, and streets established constructed, and in use on March 2, 1955. It shall not include highways, roads, or streets, established, constructed, and in use after that date, or highways, roads, or streets, or portions thereof relocated after that date.

(5) "Arterial highway" means any state highway designated by agreement between the commission and the secretary of commerce as part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(6) "Throughway" means any portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(7) "Throughway intersection area" means an area within a radius of three hundred (300) feet from the point of intersection of the center lines of a throughway and any public road, street, or highway.

(8) "Highway authorities" or "authority" means the entities in state, county, and municipal governments which have authority to construct, repair, and maintain highways, roads, and streets.

History: En. Sec. 10-102, Ch. 197, L. 1965.

32-4303. Designation as controlled access highway—resolution—findings. (1) No portion of any interstate highway, throughway or throughway intersection, or other federal-aid or state highway shall be designated as a controlled access highway unless the commission shall adopt a resolution so designating it. The resolution shall be adopted by the majority vote of the members in attendance at any regular or special meeting. In it, the commission shall find and determine:

(a) That it is necessary and desirable that the owners or occupants of the abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view.

(b) That it is necessary and desirable that the rights of, or easements to access, light, air, or view be acquired by the state so as to prevent such portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets, alleys, public or private roads or ways of passage.

(2) The requirement by the United States that access must be controlled shall be a basis of necessity for the passing of the resolution.

(3) The resolution shall contain a statement of the reasons for its adoption, and shall set forth the location, distance, and termini of the portion of the highway designated as a controlled access highway.

History: En. Sec. 10-103, Ch. 197, L. 1965.

32-4304. Designation as controlled access highway—petition from city or county. (1) No portion of a throughway or throughway intersection, or other federal-aid or state highway within the limits of an incorporated city or town shall be designated a controlled access highway except upon petition in writing from its governing body.

(2) If the portion lies wholly or partially outside of any such corporate limits, the petition must come from the board of the county within which the portion is located.

(3) Any such petition, once filed with the commission, shall be irrevocable unless the commission concurs in a request to revoke it.

History: En. Sec. 10-104, Ch. 197, L. 1965.

32-4305. Powers of highway authorities. (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled access facilities for public use. Each such authority shall, by resolution, make the findings and determinations provided for in section 10-103 [32-4303] of this chapter.

(2) Within incorporated cities and towns, and upon county roads, each authority shall be subject to the consent of the appropriate governing body.

(3) Each authority may also exercise, with relation to controlled access facilities, any and all additional authority now or hereafter vested in it over highways, roads, or streets within its respective jurisdiction. It may regulate, restrict, or prohibit the use of controlled access facilities by any vehicles or traffic.

History: En. Sec. 10-105, Ch. 197, L. 1965.

32-4306. Design of controlled access facility—entrance and exit restricted. (1) Each highway authority may so design any controlled access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which the facility is intended. In so doing, it may divide and separate any controlled access facility into separate roadways by the construction of raised curbs, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, and other devices.

(2) No person shall have any right to enter upon, exit from, or cross any controlled access facility except at designated points at which access may be permitted. Terms and conditions governing such access may be specified from time to time.

History: En. Sec. 10-106, Ch. 197, L. 1965.

32-4307. New and existing facilities—elimination of grade crossings. (1) Each highway authority may provide for elimination of intersections at grade of controlled access highways or controlled access facilities with

existing federal-aid and state highways, county roads, and city or town streets. Elimination shall be accomplished at the boundary of the controlled access right of way.

(2) After the establishment of any controlled access highway or facility, no private or public highway or street which is not a part of the highway or facility shall intersect it at grade. No street, road, highway, or other public way shall be opened into or connected with any controlled access highway or facility without the prior consent and approval of the appropriate highway authority.

(3) The commission may, whenever it determines that the public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled access highways in sparsely populated rural areas. The commission shall have sole jurisdiction to determine the existence and location of any intersection with interstate highways, throughways and other federal-aid and state highways.

History: En. Sec. 10-107, Ch. 197, L.
1965.

32-4308. Existing roads and streets as service roads. (1) In connection with the development of any controlled access highway or facility, each highway authority may plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets. Each authority may designate as local service roads and streets any existing road or street.

(2) Service roads and streets shall be of appropriate design. They shall be separated from the controlled access highway or facility by means of all devices determined to be necessary to carry out the provisions of this chapter.

(3) Each authority shall exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled access highways or facilities.

History: En. Sec. 10-108, Ch. 197, L.
1965.

32-4309. Marking of controlled access highway or facility with signs. Any controlled access highway or facility and portions thereof shall be physically marked by signs indicating to drivers of vehicles the points at which they enter and leave a controlled access area.

History: En. Sec. 10-109, Ch. 197, L.
1965.

32-4310. Commercial enterprise or structure prohibited. No commercial enterprise or structure shall be constructed or operated on the publicly owned right of way of a controlled access highway or facility or on any publicly leased land used in connection therewith.

History: En. Sec. 10-110, Ch. 197, L.
1965.

32-4311. Violations—penalties. (1) On any controlled access highway or facility it is unlawful for any person to:

(a) Drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line.

(b) Make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line.

(c) Drive any vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section or line.

(d) Drive any vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line which separates the service road from the highway or facility.

(e) Construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

(2) Any person who violates any of the provisions of this section is guilty of a misdemeanor. Upon arrest and conviction therefor, he shall be punished by a fine of not less than five dollars (\$5) nor more than one hundred dollars (\$100), or by imprisonment in the city or county jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 10-111, Ch. 197, L. 1965.

CHAPTER 44—GOOD ROADS DAY—OBSTRUCTIONS, ENCROACHMENTS AND DEBRIS ON HIGHWAYS

- Section 32-4401. Good Roads day.
 32-4402. Injuries to highways and trees.
 32-4403. Excavations across highways—permits and bridging.
 32-4404. Liability for permitting water to overflow.
 32-4405. Highway encroachments—power to remove.
 32-4406. Notice to remove encroachment.
 32-4407. Penalty for failure to remove encroachment promptly.
 32-4408. Removal of encroachment—actions—prosecution of offenses.
 32-4409. Prosecution by county attorney.
 32-4410. Dumping garbage or other debris or refuse.

32-4401. Good Roads day. The third Tuesday in June is hereby designated "Good Roads day." The governor may annually, by public proclamation, request the people of the state to contribute toward the improvement and safety of public highways.

History: En. Sec. 11-101, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Chapter 11 of the Highway Code, entitled "Miscellaneous."

32-4402. Injuries to highways and trees. (1) The malicious injury of any highway, bridge, private way, or guidepost or inscription thereon is punishable as provided in sections 94-3201 and 94-3202.

(2) Every person who, without authority, cuts down, or otherwise maliciously injures or destroys any shade or ornamental tree on any highway is punishable as provided in section 94-3202 (2).

History: En. Sec. 11-102, Ch. 197, L.
1965.

Compiler's Note

Section 94-3201, referred to at the end of subsection (1) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

32-4403. Excavations across highways—permits and bridging. (1)

(a) Any person contemplating the excavation or construction of any ditch, dike, flume or canal across a public highway shall obtain a written permit from the board of county commissioners, road supervisor or county surveyor of said district before beginning construction or excavation.

(b) Any person obtaining said written permit shall bridge at once, in accordance with plans and specifications furnished by the board of county commissioners.

(2) Any such bridge shall be maintained by the county.

(3) Any person obtaining a construction permit or any person using the water of such ditch, dike, flume or canal shall keep the same in repair where such water may flow over or in any way injure a public highway.

History: En. Sec. 11-103, Ch. 197, L.
1965.

32-4404. Liability for permitting water to overflow. (1) Every person who excavates or constructs or owns any ditch, dike, flume or canal, or stores, distributes or uses water for any purpose and permits the water to flow over any public highway to the injury thereof, must upon notification by the board of county commissioners, road supervisor or county surveyor of the district where such overflow occurred, repair the damages occasioned. If such repairs are not made within a reasonable time, the district must make them and recover the expense thereof in an action at law.

(2) Every person constructing, owning or using such ditch or flume who permits an overflow is liable as provided in section 94-3565.

History: En. Sec. 11-104, Ch. 197, L.
1965.

32-4405. Highway encroachments—power to remove. (1) If any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor must immediately remove the same.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

History: En. Sec. 11-105, Ch. 197, L.
1965.

32-4406. Notice to remove encroachment. (1) Notice to remove the encroachment immediately, specifying the breadth of the highway

and the place and extent of the encroachment, must be given to the occupant or owner of the land or person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) By leaving it at his place of residence if such person resides in the county; or

(b) By posting it on the encroachment, if such person does not reside in the county.

History: En. Sec. 11-106, Ch. 197, L.
1965.

32-4407. Penalty for failure to remove encroachment promptly. If the encroachment is not removed immediately, or removal is not diligently conducted, the one who causes, owns, or controls the encroachment is liable to a penalty of ten dollars (\$10) for each day the same continues.

History: En. Sec. 11-107, Ch. 197, L.
1965.

32-4408. Removal of encroachment—actions—prosecution of offenses. (1) If the encroachment is denied, the road supervisor shall commence in the proper court an action to abate the same as a nuisance. If he recovers judgment, he may have his costs and ten dollars (\$10) for every day such nuisance remained after notice.

(2) If the encroachment is not denied, and is not removed for five (5) days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of land, or of the person owning or controlling the encroachment. He may recover the expense of removal, ten dollars (\$10) for each day the encroachment remained after notice, and costs in an action brought for that purpose.

History: En. Sec. 11-108, Ch. 197, L.
1965.

32-4409. Prosecution by county attorney. The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions heretofore provided in the name of the state of Montana. All penalties shall be paid into the general fund of the county.

History: En. Sec. 11-109, Ch. 197, L.
1965.

32-4410. Dumping garbage or other debris or refuse. (1) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) In or upon any highway, road, street, or alley of this state.

(b) In or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof, or any officer or agent or department thereof.

(c) Within two hundred yards of such public highway, road, street, or alley, or public recreational property.

(2) Any person found guilty of a violation of this section shall be fined in the sum not exceeding twenty-five dollars (\$25), or imprisoned in the county jail for a period not exceeding thirty (30) days, or be punished by both such fine and imprisonment, in the discretion of the court.

(3) The provisions of this section shall be enforced by all highway patrolmen, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana. In addition, game wardens shall have the right to enforce the provisions of this section in or upon any public recreational property.

History: En. Sec. 11-110, Ch. 197, L. 1965.

CHAPTER 45—JUNKYARDS ALONG ROADS

Section 32-4501.	Purpose of act.
32-4502.	Definition of terms.
32-4503.	Operation without a permit a public nuisance.
32-4504.	Screening required for permit.
32-4505.	Issuance of permit—duration—fees, disposition.
32-4506.	Bond of operator.
32-4507.	Compliance causing hardship to operator—continuance of business.
32-4508.	Enforcement of act by sheriff—rules and regulations—hearings.
32-4509.	Hearings conducted by sheriff—time and place.
32-4510.	Powers of sheriff at hearings.
32-4511.	Appeal from decision of sheriff—hearing by district court.
32-4512.	Penalty for violation of act.

32-4501. Purpose of act. The purpose of this act is: (1) to prevent the distraction of motorists.

(2) to enhance scenic beauty along roads.

History: En. Sec. 1, Ch. 136, L. 1965. Title of Act

An act relating to regulation of certain junkyards.

32-4502. Definition of terms. As used in this act unless the context otherwise requires. (1) "Road" means a county, state, federal or limited access highway including bridges and bridge approaches.

(2) "Junkyard" means a place where 5 or more junked, wrecked or nonoperative automobiles, vehicles, machines and other similar scrap or salvage materials are located.

(3) "Operator or operators" means a person, firm or corporation who operates a junkyard, or who allows a junkyard to be placed or to remain on premises owned or controlled by him.

(4) "Person" means an individual, firm, agency, company, association, partnership, business trust, joint stock company or corporation.

(5) "Sheriff" means a sheriff of the county wherein the junkyard is situated.

(6) "Deputy Sheriff" means a person appointed by the sheriff.

(7) "Permit" means the document which allows a person to operate a junkyard under this act.

History: En. Sec. 2, Ch. 136, L. 1965.

32-4503. Operation without a permit a public nuisance. No person shall operate a junkyard which is closer than 2000 feet to the centerline of a road unless a permit is obtained from the sheriff. The operation of such a junkyard without a permit is declared to be a public nuisance.

History: En. Sec. 3, Ch. 136, L. 1965.

32-4504. Screening required for permit. (1) The sheriff may require screening of a junkyard when:

(a) it is within 2000 feet of the centerline of a road;
(b) it is not hidden from the view of motorists using the road by an artificial or natural screen or by natural topography.

(2) The sheriff shall issue a permit in accordance with his rules and regulations:

(a) after the required screening is done, or
(b) when the junkyard is hidden from the view of motorists using the road by an artificial or natural screen or by natural topography.

(3) The screening required may be effected:

(a) by the construction of a fence, or
(b) by plants, shrubs, trees, or flowering plants which provide a suitable and sufficient screen, or
(c) by making use of existing foliage.

(4) The required screening must be installed within six (6) months after the effective date of this act and must be at least eight (8) feet in height and be maintained (i. e. painted, rebuilt, etc.) thereafter.

History: En. Sec. 4, Ch. 136, L. 1965.

32-4505. Issuance of permit—duration—fees, disposition. The sheriff shall charge a fee of fifty dollars (\$50.00) for the issuance of a permit. A permit shall be effective for a two-year period. Fees collected shall be deposited with the county treasurer to the credit of the general fund.

History: En. Sec. 5, Ch. 136, L. 1965.

32-4506. Bond of operator. When the sheriff has reasonable cause to doubt the financial responsibility of an operator or his compliance with this act, the sheriff may require him to furnish and maintain a bond. In each case, he shall approve a form, amount, and the sureties. The bond shall be no less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5,000.00), conditioned upon the operator complying with the provisions of this act and the regulations adopted pursuant to it.

History: En. Sec. 6, Ch. 136, L. 1965.

32-4507. Compliance causing hardship to operator—continuance of business. When the sheriff finds compliance with this act would cause peculiar or exceptional hardship to an operator the junkyard may be maintained for a period of two (2) years following the effective date of this act. However, it may not be expanded in any manner.

History: En. Sec. 7, Ch. 136, L. 1965.

32-4508. Enforcement of act by sheriff—rules and regulations—hearings. The sheriff has the power to:

(1) Exercise general supervision of the administration and enforcement of this act.

(2) Adopt after a hearing rules and regulations concerning the operation of junkyards which the sheriff deems necessary to the administration and enforcement of this act.

(3) Adopt without a hearing rules and regulations concerning material, foliage and screening which will insure accomplishment of the purposes of this act.

(4) Adopt without hearing rules and regulations concerning the procedural aspects of hearings, and detail necessary to the enforcement and administration of this act.

(5) Issue after a hearing:

(a) orders abating the operation of a junkyard which violate this act, or

(b) orders which require adoption of remedial measures including construction or planting of screens or the utilization of natural screening, extension, modification or addition to new or existing screens.

(6) Issue, renew, revoke, modify or deny permits for the operation of a junkyard.

(7) Make investigations or inspections which are deemed necessary by the sheriff:

(a) to insure compliance with the provisions of this act,

(b) to insure compliance with rules, regulations or orders of the board which are deemed necessary to the administration and enforcement of this act.

(8) Institute in a court of competent jurisdiction procedures to compel compliance with the provisions of this act or with the orders, rules and regulations issued pursuant to it.

(9) Enter at a reasonable time through an officer, assistant, agent or employee public or private property for the purpose of inspection of conditions relating to the operation of a junkyard.

History: En. Sec. 8, Ch. 136, L. 1965.

32-4509. Hearings conducted by sheriff—time and place. (1) Public hearings shall be conducted by the sheriff:

(a) prior to the adoption of rules or regulations which concern the prevention, abatement or control of junkyards;

(b) before the issuance of an order prohibiting an act or acts deemed in contravention of any rules, regulations, orders or permits of the sheriff;

(c) before denial, revocation or modifications of a permit provided for by this act;

(d) before any other final determination is made by the sheriff which directly affects the activities of a person.

(2) The sheriff shall grant a hearing to a person:

(a) who has not been heard in connection with issuance of an order or the making of a determination, and

(b) who considers himself aggrieved by an order or determination and

(c) who shall file with the sheriff a petition. The petition shall explain briefly why an order or determination is contrary to law or is injurious to him, and request a hearing. At a hearing the petitioner may appear in person or by attorney, may submit evidence, and shall be given the opportunity to be heard.

(3) Hearings provided for in this act may be conducted by the sheriff or deputy sheriff designated by him in the name of the sheriff at a time and place specified by the sheriff.

History: En. Sec. 9, Ch. 136, L. 1965.

32-4510. Powers of sheriff at hearings. At an administrative hearing the sheriff or a deputy sheriff designated by him to hold the hearing may:

(a) administer oaths

(b) examine witnesses and

(c) issue in the name of the sheriff notices of hearings and subpoenas to witnesses and for production of evidence relevant to any matter involved in the hearing.

History: En. Sec. 10, Ch. 136, L. 1965.

32-4511. Appeal from decision of sheriff—hearing by district court.

(1) Within fifteen (15) days of the mailing of notice of the final decision of the sheriff, a person who has petitioned for a hearing may appeal from the decision.

(2) Appeal will be made to the district court of the county in which the junkyard is located.

(3) The court shall set the matter for hearing upon thirty (30) days' written notice to the sheriff and petitioner. At the hearing, the court shall take testimony, examine the facts of the case, and determine whether the petitioner is entitled to relief.

History: En. Sec. 11, Ch. 136, L. 1965.

32-4512. Penalty for violation of act. A person violating a provision of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00). Each day of violation of the provisions of this act shall constitute a separate offense.

History: En. Sec. 12, Ch. 136, L. 1965.

TITLE 33—HOMESTEADS

Chapter 1. Homesteads, 33-124.

CHAPTER 1—HOMESTEADS

Section 33-124. Homesteads—quantity and value of land.

33-124. (6968) Homesteads—quantity and value of land. Homesteads may be selected and claimed:

1 and 2. * * * [Same as parent volume.]

3. Such homestead, in either case, shall not exceed in value the sum of seven thousand five hundred dollars (\$7,500.00), provided, however, that in any proceedings instituted to determine the value of such homestead, the assessed value of such land, with included appurtenances, if any, and of such dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.

History: En. Sec. 1693, Civ. C. 1895; re-en. Sec. 4717, Rev. C. 1907; re-en. Sec. 6968, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1931; amd. Sec. 1, Ch. 166, L. 1937; amd. Sec. 1, Ch. 50, L. 1941; amd. Sec. 1, Ch. 266, L. 1965. Cal. Civ. C. Sec. 1260.

Amendment

The 1965 amendment increased the

maximum value of the homestead specified in paragraph 3 from \$2,500 to \$7,500.

Effective Date

Section 2 of Ch. 266, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

TITLE 36—HUSBAND AND WIFE

Chapter 2. Conciliation law, 36-201 to 36-205.

CHAPTER 1—HUSBAND AND WIFE—MUTUAL OBLIGATIONS, POWERS AND PROPERTY RIGHTS

36-101. (5782) Mutual obligations of husband and wife.

Cross-Reference

Cause of action for alienation of affections abolished, sec. 17-1201.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower &*

Lubrecht Constr. Co., 214 F Supp 298, 299.

Under section 48-101 and this section a woman by her marriage obtains a contractual right to consortium. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

References

Clark v. Clark, 143 M 183, 387 P 2d 907.

36-110. (5791) Married women may prosecute actions.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 299.

Removal of Common-law Disability

This section and section 36-128 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

36-128. (5809) May sue and be sued.

History Correction

History: En. Sec. 1444, 5th Div. Comp. Stat. 1887, re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R. C. M. 1921.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower &*

Lubrecht Constr. Co., 214 F Supp 298, 299.

Removal of Common-law Disability

This section and section 36-110 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

CHAPTER 2—CONCILIATION LAW

Section 36-201. Manner of citation.

36-202. Purposes—definitions—where applicable.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential.

36-204. Procedure.

36-205. Powers of the court.

36-201. Manner of citation. This act may be cited as the "Montana Conciliation Law."

History: En. Sec. 1, Ch. 238, L. 1963.

Title of Act

An act constituting the several district

courts, courts of conciliation for the purpose of protecting the rights of children and to promote and protect the family life and the institution of matrimony by

providing a means for reconciliation of spouses and the amicable settlement of domestic and family controversies, and specifically where minor children are involved; defining the jurisdiction of said courts and to establish such courts which requires a determination by the judge or judges of the district whether such conciliation court is necessary in said district; providing for the designation of a judge to handle conciliation cases, necessary personnel, and payment of the expenses of said courts of conciliation by the respective counties in which said court is functioning; the manner of holding conferences, privacy of hearings, proceedings and recommendations; no fees to be charged, the hearings to be informal, stay

of divorce proceedings for not to exceed thirty days to give the parties an opportunity for a reconciliation conference, transfer of cases to the conciliation court when it appears that the welfare of minors is going to be seriously affected and permitting the jurisdiction of the conciliation court where no minors are involved if it appears that a reconciliation may be had, granting the conciliation court the same powers as a district court under the Constitution of the state of Montana, Article 8, Section 1, section 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

36-202. Purposes—definitions—where applicable. (1) Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

(2) Definitions. As used in this chapter "shall" is mandatory and "may" is permissive.

(3) Applicability of the Law—Determination by District Court. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge, and by a majority of the judges of the district court in counties having more than one such judge.

History: En. Sec. 2, Ch. 238, L. 1963.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential. (1) Exercise of Jurisdiction. Each district court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court."

(2) Selection of Judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

(3) Transfer of Cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so

appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

(4) Budget. The provisions of the county budget system, section[s] 16-1901 to 1911, inclusive, R.C.M. 1947, shall, except as provided by section 4, subsection 9 [36-204 (9)] of this act, be applicable to expenditures for the court of conciliation; provided, however, that the court may submit to the board of county commissioners the information required by section 16-1901 on or before July 1st of each year.

(5) Manner of Conciliation. The judge of the conciliation court may hear all matters invoked under this act or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

The conciliation counselor shall:

(a) Hold conciliation conferences with parties to, and hearings in, proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the conciliation court.

(b) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

(6) Probation Officers Duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

(7) Privacy of Hearings. All district court hearings or conferences in proceedings under this chapter shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

(8) Jurisdiction. The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the Constitution of Montana, Article 8, Section 1, Chapter 3 [Title 93], Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: En. Sec. 3, Ch. 238, L. 1963.

36-204. Procedure. (1) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(2) Prior to the filing of any action for divorce, annulment or separate maintenance, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

(3) The petition shall be captioned substantially as follows:

District Court of the State of Montana

For the County of _____

Upon the petition of _____ Petitioner	}	Petition for Conciliation (Under the Conciliation Court Law)
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And concerning _____ Respondents.	}	and _____
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To the Conciliation Court:

(4) The petition shall:

(a) Allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.

(b) State the name and age of each minor child whose welfare may be affected by the controversy.

(c) State the name and address of the petitioner, or the names and addresses of the petitioners.

(d) If the petition is presented by one spouse only, name the other spouse as a respondent, and state the address of that spouse.

(e) Also name as a respondent any other person who has any relation to the controversy, and state the address of the person, if known to the petitioner.

(f) State such other information as the court may by rule require.

(5) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition, when any person requests such assistance. All public officers

in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

(6) No Fees. No fee shall be charged by any officer for filing the petition, nor shall any fee be charged by any officer for the performance of any duty pursuant to this chapter.

(7) Time and Place of Hearings. The court shall fix a reasonable time and place for hearing on the petition, and shall cause such notice of the filing of the petition and the time and place of the hearing as it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil cases.

(8) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district, and the hearing may be had in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(9) Hearings Informal. The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this act the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians or psychiatrists, or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

(10) Orders—Effective Time—Reconciliation Agreement. At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than thirty (30) days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(11) During a period beginning upon the filing of the petition for conciliation and continuing until thirty (30) days after the hearing of the petition for conciliation, neither spouse shall file any action for divorce, annulment of marriage, or separate maintenance.

If, however, after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute proceedings for divorce, annulment of marriage or separate maintenance. The pendency of a divorce, annulment, or separate maintenance action shall not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(12) Stay of Divorce Proceedings—Where Conciliation Petition Filed First. Whenever any action for divorce, annulment of marriage, or separate maintenance is filed in the district court, and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage or the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

(13) Jurisdiction Where No Minors Involved. Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested action for divorce, annulment, or separate maintenance, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

History: En. Sec. 4, Ch. 238, L. 1963.

36-205. Powers of the court. The conciliation court shall have the same powers as the district court under the Constitution of the state of Montana, Article 8, Section 1, section[s] 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

History: En. Sec. 5, Ch. 238, L. 1963.

TITLE 37—INITIATIVE AND REFERENDUM

Chapter 1. Initiative and referendum, 37-104.1.

CHAPTER 1—INITIATIVE AND REFERENDUM

Section 37-104.1. Attorney general's summary of referred or initiative measures—placement on ballot.

37-104.1. Attorney general's summary of referred or initiative measures—placement on ballot. The secretary of state of the state of Montana prior to certifying and numbering of referendum, initiative or constitutional amendment to the several counties of Montana as provided by sections 37-105 and 23-1102 of the Revised Codes of Montana, 1947, shall transmit a copy of the measure to be voted upon to the attorney general of Montana. Within ten (10) days after the measure is filed with him, the attorney general shall provide and return to the secretary of state a statement in ordinary plain language explaining in not more than one hundred (100) words the general purpose of the measure submitted. The statement as prepared by the attorney general, shall be in addition to the legislative title of the measure. On the printing of the ballot, the statement of the attorney general shall precede the other title of the measure. In providing the statement, the attorney general shall give a true and impartial statement of the purpose of the measure in plain, easily understood language and in such manner as shall not be an argument or likely to create prejudice either for or against the measure.

History: En. Sec. 1, Ch. 22, L. 1963. tana and repealing all acts and parts of acts in conflict therewith.

Title of Act

An act to require a true, plain and impartial statement of the meaning and purpose of any referendum, initiative or constitutional amendment submitted to the vote of the people of the state of Mon-

Repealing Clause

Section 2 of Ch. 22, Laws 1963 repealed all acts and parts of acts in conflict therewith.

TITLE 38—INSANE AND FEEBLE-MINDED

- Chapter 1. The Montana state hospital—management, 38-107 to 38-110, 38-119, 38-120.
2. Examination of persons mentally deranged—commitment, 38-207, 38-210.
5. Convalescent leave of patients, 38-502, 38-504, 38-505.
9. Leases of farm land for state hospital and state penitentiary authorized,
Repealed—Section 82, Chapter 266, Laws of 1963.

CHAPTER 1—THE MONTANA STATE HOSPITAL—MANAGEMENT

- Section 38-107. Department may send patient to friends.
38-108(1). May contract with some other institution.
38-108(2). May contract with some other institution.
38-109. Discharge of patients.
38-110. Maintenance of indigent persons on discharge.
38-119. Insane person not indigent must be paid for.
38-120. Receipt of nonresident insane pending return to home state.

38-101, 38-102. (1413) Repealed.

Repeal

These sections (Secs. 2260, 2261, Pol. C. 1895; Sec. 1, Ch. 57, L. 1913; Sec. 1, Ch. 76, L. 1943; Sec. 19, Ch. 266, L. 1963),

relating to the name and management of the state hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-103. (1414) Repealed.

Repeal

This section (Sec. 2, Ch. 57, L. 1913), enumerating the powers and duties of

the board of the Montana state hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-104. (1415) Repealed.

Repeal

This section (Sec. 3, Ch. 57, L. 1913; Sec. 1, Ch. 42, L. 1923; Sec. 1, Ch. 149, L. 1929; Sec. 1, Ch. 268, L. 1947; Sec. 20, Ch.

266, L. 1963), relating to the superintendent of the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-105, 38-106. (1416, 1417) Repealed.

Repeal

These sections (Secs. 4, 5, Ch. 57, L. 1913), relating to the superintendent and

other staff members of the Montana state hospital, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-107. (1418) Department may send patient to friends. The department of public institutions may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state.

History: En. Sec. 2280, Pol. C. 1895; re-en. Sec. 1121, Rev. C. 1907; re-en. Sec. 1418, R. C. M. 1921; amd. Sec. 21, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The department of public institutions" at the beginning of the section for "The board."

38-108(1). (1419) May contract with some other institution. The department of public institutions may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state.

History: En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907; re-en. Sec. 1419, R. C. M. 1921; amd. Sec. 8, Ch. 213, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 213 and once by Ch. 266. The two amendments may be inconsistent, in that Ch. 266 contains language that was deleted by Ch. 213; therefore, the compiler has set out the language of both amendatory acts. The above is the

language of Ch. 213, Laws 1963; the language of Ch. 266 appears below as section 38-108(2).

Amendment

The 1963 amendment substituted "department of public institutions" for "board" at the beginning of the section; and deleted from the end of the section a clause reading, "and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent."

38-108(2). (1419) May contract with some other institution. The department of public institutions may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state, and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent.

History: En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907; re-en. Sec. 1419, R. C. M. 1921; amd. Sec. 22, Ch. 266, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 213 and once by Ch. 266. The two amendments may be inconsistent, in that Ch. 266 contains language that was deleted by Ch. 213; therefore, the com-

piler has set out the language of both amendatory acts. The above is the language of Ch. 266, Laws 1963; the language of Ch. 213 appears as section 38-108(1).

Amendment

Chapter 266, Laws 1963, substituted "The department of public institutions" at the beginning of the section for "The board."

38-109. (1421) Discharge of patients. The department of public institutions must cause to be discharged from the Montana state hospital any patient upon the written report of the hospital medical staff, that such patient is in satisfactory mental condition to be discharged. Such written report must be filed and kept in the office of the department, and every inmate on recovery must be ordered released, without requiring a sponsor.

History: En. Sec. 2283, Pol. C. 1895; re-en. Sec. 1124, Rev. C. 1907; re-en. Sec. 1421, R. C. M. 1921; amd. Sec. 1, Ch. 165, L. 1943; amd. Sec. 23, Ch. 266, L. 1963. Cal. Pol. C. Sec. 2189.

Amendment

The 1963 amendment substituted "The

department of public institutions" at the beginning of the section and "the department" in the second sentence for "the board" in both places; and deleted "for the insane" following "Montana state hospital."

38-110. Maintenance of indigent persons on discharge. Upon the discharge of any patient of the Montana state hospital, the department shall notify the board of public welfare of the county from which such patient was committed, and the said county board of public welfare shall at once ascertain whether the discharged patient is in financial need, and if such patient is found to be in financial need the county board of public welfare shall properly care for and maintain the discharged patient under the provision of the Public Welfare Act until such patient is able to care for himself or other provision has been made for such care.

History: En. Sec. 2, Ch. 165, L. 1943; amd. Sec. 24, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted "in addi-

tion to the financial aid required by section 1422" after "Montana state hospital"; and substituted "the department" for "the board" in the same place.

38-111. Repealed.

Repeal

This section (Sec. 3, Ch. 165, L. 1943; Sec. 1, Ch. 153, L. 1957), relating to the

medical examination of patients, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-118. (1429) Repealed.

Repeal

This section (Sec. 2291, Pol. C. 1895), relating to nonresident insane persons,

was repealed by Sec. 2, Ch. 198, Laws 1963 and by Sec. 10, Ch. 213, Laws 1963.

38-119. (1430) Insane person not indigent must be paid for. None but indigent persons must be received into the Montana state hospital unless their care and maintenance is paid or guaranteed by the parents, children, or guardians of such person.

History: En. Sec. 2292, Pol. C. 1895; re-en. Sec. 1133, Rev. C. 1907; re-en. Sec. 1430, R. C. M. 1921; amd. Sec. 25, Ch. 266, L. 1963.

clause which read, "and all money received by the contractor for the care and maintenance of such persons must be accounted for in his settlement with the board."

Amendment

The 1963 amendment deleted a final

38-120. Receipt of nonresident insane pending return to home state. An insane person, nonresident of this state, may be received into the Montana state hospital for a period not to exceed thirty (30) days pending return to the state of his residence.

History: En. Sec. 1, Ch. 198, L. 1963.

Title of Act

An act to permit reception of nonresident insane to state hospital pending return to state of residence and repealing section 38-118, Revised Codes of Montana, 1947.

Repealing Clause

Section 2 of Ch. 198, Laws 1963 read "Section 38-118, R.C.M. 1947, is hereby repealed."

**CHAPTER 2—EXAMINATION OF PERSONS MENTALLY DERANGED
—COMMITMENT**

Section 38-207. Forms of certificates.

38-210. Moneys of insane person—disposal of.

38-201. (1431) Examination before magistrate—affidavit, etc.

References

State v. Green, 143 M 234, 388 P 2d 362.

38-207. (1437) Forms of certificates. The certificate must be made in the form prescribed by, and if they can be had, upon blanks furnished by the state department of public institutions.

History: En. Sec. 2306, Pol. C. 1895; 1437, R. C. M. 1921; amd. Sec. 26, Ch. 266, re-en. Sec. 1140, Rev. C. 1907; re-en. Sec. L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" at the

end of the section for "board of the commissioners for the insane."

38-210. (1440) Moneys of insane person—disposal of. When any person is adjudged to be insane and ordered committed to the Montana state hospital, or is adjudged to be in such a condition of mind that he should be placed in such hospital for observation, all moneys found on him at the time he is taken into custody must be certified to by the judge, and sent with such person to the hospital, to be delivered to the superintendent thereof, whose receipt therefor shall be taken by the officer or other person delivering him to the hospital, who must file such receipt with the clerk of the district court of the county in which the proceedings were had. If the amount exceeds one hundred dollars (\$100.00), the excess must be applied to the payment of the expenses of such person while in the hospital. If the amount is one hundred dollars (\$100.00) or less it must be kept and delivered to the person when discharged or released from the hospital or applied in payment of funeral expenses if such person dies while in such hospital. If any amount standing to the credit of any person paroled, discharged or released, or after payment of the funeral expenses of such person who dies while in such hospital, shall remain unclaimed for one (1) year after such parole, discharge, release or death, fifty per centum (50%) of such amount, but not in any event exceeding fifty dollars (\$50.00) shall be withdrawn from such account and placed in the agency fund in the state treasury, to be expended for indigent patients at such times and in such manner and for such purposes as may be prescribed by the superintendent of such hospital. Any balance remaining to the credit of any such person, shall be transmitted to the county treasurer of the county from which said person was sent, and if any sum remains after paying the costs of hearing, and transportation to the hospital, the balance shall be paid into the state treasury to the credit of the general fund.

History: Ap. p. Sec. 2309, Pol. C. 1895; amd. Sec. 6, p. 164, L. 1897; re-en. Sec. 1143, Rev. C. 1907; re-en. Sec. 1440, R. C. M. 1921; amd. Sec. 6, Ch. 117, L. 1939; amd. Sec. 2, Ch. 76, L. 1943; amd. Sec. 231, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the agency fund in the state treasury" for "the patients' deposit account, special account" in the fourth sentence.

38-214. (1444) Repealed.**Repeal**

This section (Sec. 8, p. 165, L. 1897; Sec. 9, Ch. 117, L. 1939; Sec. 3, Ch. 76, L. 1943; Sec. 1, Ch. 49, L. 1955; Sec. 1,

Ch. 131, L. 1959), relating to the expense of maintenance of inmates of the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 3—TRANSFER OF STATE HOSPITAL PATIENTS TO STATE TRAINING SCHOOL AT BOULDER

38-304. Repealed.**Repeal**

This section (Sec. 3, Ch. 10, L. 1943), relating to the expense of clothing per-

sons transferred to the state training school, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 4—EXAMINATION AND COMMITMENT OF PERSON AS
MENTALLY DERANGED BUT NOT DANGEROUS—VOLUNTARY
APPLICATION FOR ADMISSION

38-409. Repealed.

Repeal

This section (Sec. 9, Ch. 157, L. 1943), relating to investigations of the financial

worth of persons committed or admitted to the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-411, 38-412. Repealed.

Repeal

These sections (Secs. 2, 3, Ch. 129, L. 1955), relating to the charges for care and maintenance of persons voluntarily

admitted to the Montana state hospital, were repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 5—CONVALESCENT LEAVE OF PATIENTS

Section 38-502. Convalescent leave of patients from Montana state hospital.

38-504. Termination of convalescent leave.

38-505. Report by person under whom patient is placed on convalescent leave.

38-502. Convalescent leave of patients from Montana state hospital. The superintendent of the Montana state hospital may grant a convalescent leave to a patient under general conditions prescribed by the state department of public institutions.

History: En. Sec. 2, Ch. 145, L. 1941; amd. Sec. 1, Ch. 152, L. 1957; amd. Sec. 27, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" at the end of the section for "state board of commissioners for the insane."

38-504. Termination of convalescent leave. All such patients, while on convalescent leave, shall remain in the legal custody, and under the control of the state department of public institutions, and at any time during such convalescent leave, upon evidence satisfactory to the superintendent or to the state department of public institutions, that convalescent leave should terminate, such patient must be returned to the Montana state hospital. The written order of the state department of public institutions, certified by the superintendent of the hospital, shall be sufficient warrant to any officer to retake and return such patient to actual custody in the Montana state hospital.

History: En. Sec. 4, Ch. 145, L. 1941; amd. Sec. 3, Ch. 152, L. 1957; amd. Sec. 28, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" in three places for "state board of commissioners for the insane."

38-505. Report by person under whom patient is placed on convalescent leave. The person to whom such person shall be placed on convalescent leave shall report the physical, moral and mental condition of the patient to the superintendent either in person or by writing as often and as fully as the superintendent may require, and subject to such recommendations and regulations as the state department of public insti-

tutions may determine. In case of failure so to report on request, the inmate may be returned to the Montana state hospital. The patient shall be accessible to representatives of the hospital.

History: En. Sec. 5, Ch. 145, L. 1941; amd. Sec. 4, Ch. 152, L. 1957; amd. Sec. 29, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" for "state board of commissioners for the insane" near the end of the first sentence.

CHAPTER 7—ALCOHOLISM SERVICES CENTER

(Repealed—Section 15, Chapter 112, Laws 1963; Section 101, Chapter 199, Laws 1965)

38-701 to 38-711. (1445 to 1455) Repealed.

Repeal

These sections (Secs. 1, 2, 4 to 12, Ch. 139, L. 1911; Secs. 1, 2, Ch. 130, L. 1955) relating to the state hospital for inebriates, were repealed by Sec. 15, Ch. 112, Laws

1963. Section 38-702 was also repealed by Sec. 82, Ch. 266, Laws 1963, and sections 38-707 and 38-708 were also repealed by Sec. 10, Ch. 213, Laws 1963.

38-712 to 38-724. Repealed.

Repeal

These sections (Secs. 1 to 13, Ch. 112, L. 1963), relating to the alcoholism serv-

ices center, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 8—MONTANA STATE TRAINING SCHOOL AND HOSPITAL

(Repealed—Section 10, Chapter 213, Laws 1963; Section 82, Chapter 266, Laws 1963 and Section 101, Chapter 199, Laws 1965)

38-801. Repealed.

Repeal

This section (Sec. 1, Ch. 183, L. 1943; Sec. 1, Ch. 37, L. 1959), relating to the

establishment of the Montana state training school and hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-802. Repealed.

Repeal

This section (Sec. 2, Ch. 183, L. 1943; Sec. 54, Ch. 266, L. 1963), describing the

purposes of the state training school and hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-803. Repealed.

Repeal

This section (Sec. 3, Ch. 183, L. 1943), relating to the powers and duties of the

state board of education, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-804 to 38-807. Repealed.

Repeal

These sections (Secs. 4 to 7, Ch. 183, L. 1943; Secs. 55, 56, Ch. 266, L. 1963), relating to the powers of the superin-

tendent and to admissions to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-808, 38-809. Repealed.

Repeal

These sections (Secs. 8, 9, Ch. 183, L. 1943; Sec. 1, Ch. 186, L. 1953; Sec. 1,

Ch. 73, L. 1959), relating to payment of expenses by inmates or their parents, were repealed by Sec. 10, Ch. 213, Laws 1963.

38-809.1. Repealed.**Repeal**

This section (Sec. 2, Ch. 73, L. 1959), relating to county investigation of the financial condition of persons responsible

for the expense of maintenance of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-810, 38-811. Repealed.**Repeal**

These sections (Secs. 10, 11, Ch. 183, L. 1943), relating to the procedure for

commitment to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-812. Repealed.**Repeal**

This section (Sec. 12, Ch. 183, L. 1943; Sec. 2, Ch. 186, L. 1953; Sec. 3, Ch. 73, L.

1959), relating to orders for support of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-813 to 38-816. Repealed.**Repeal**

These sections (Secs. 13 to 16, Ch. 183, L. 1943; Sec. 9, Ch. 213, L. 1963), relating to admission to and discharge and trans-

fer from the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-817, 38-818. Repealed.**Repeal**

These sections (Secs. 17, 18, Ch. 183, L. 1943), relating to the executive board of the training school, and containing a

repeal of early laws pertaining to the school, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-819. Repealed.**Repeal**

This section (Sec. 1, Ch. 11, L. 1943), relating to the transfer of inmates from

the state training school to the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 9—LEASES OF FARM LAND FOR STATE HOSPITAL AND STATE PENITENTIARY AUTHORIZED

(Repealed—Section 82, Chapter 266, Laws of 1963)

38-901, 38-902. Repealed.**Repeal**

These sections (Secs. 1, 2, Ch. 209, L. 1943), relating to leases of farm land for

the state hospital and state prison, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 10—STATE DEPARTMENT OF MENTAL HYGIENE

(Repealed—Section 101, Chapter 199, Laws of 1965)

38-1001 to 38-1003. Repealed.**Repeal**

These sections (Secs. 1 to 3, Ch. 103, L. 1947; Sec. 30, Ch. 266, L. 1963), establish-

ing a state department of mental hygiene, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 11—HOME FOR SENILE MEN AND WOMEN

38-1101. Repealed.**Repeal**

This section (Sec. 6, Ch. 206, L. 1949; Sec. 57, Ch. 266, L. 1963), defining terms

for purposes of the chapter, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-1106. Repealed.**Repeal**

This section (Sec. 11, Ch. 206, L. 1949; Sec. 2, Ch. 230, L. 1959), relating to the

maintenance of inmates of the home for senile men and women, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-1108 to 38-1112. Repealed.**Repeal**

These sections (Secs. 13 to 17, Ch. 206, L. 1949; Sec. 3, Ch. 230, L. 1959; Sec. 58, Ch. 266, L. 1963), relating to commitment,

transfer and release of inmates of the home for senile men and women, were repealed by Sec. 101, Ch. 199, Laws 1965.

TITLE 39—INSTRUMENTS, ACKNOWLEDGMENT AND PROOF

Chapter 1. Acknowledgment and proof of instruments, 39-135.

CHAPTER 1—ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

Section 39-135. Validation of unacknowledged deeds executed before 1965.

39-135. Validation of unacknowledged deeds executed before 1965. All deeds to real property heretofore executed in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 123, L. 1965. clusive evidence of title against the grantors, containing a repealing clause.

Title of Act

An act validating deeds and conveyances heretofore made which are defective in execution or acknowledgment, providing that such instruments shall be con-

Repealing Clause

Section 2 of Ch. 123, Laws 1965 repealed all acts and parts of acts in conflict therewith.

TITLE 40—INSURANCE AND INSURANCE COMPANIES

- Chapter 17. Surety companies, 40-1727.
27. The commissioner of insurance, 40-2717.
28. Authorization of insurers and general requirements, 40-2821, 40-2822.
30. Assets and liabilities, 40-3011.
38. Life insurance and annuities, 40-3831.
39. Group life insurance, 40-3905.1, 40-3906.
44. Casualty insurance contracts, 40-4402.
47. Organization and corporate procedures of stock and mutual insurers, 40-4751 to 40-4758.
54. Extended health insurance for older persons, 40-5401 to 40-5408.

CHAPTER 17—SURETY COMPANIES

Section 40-1727. Bonds which may be furnished by county, city or township officers.

40-1727. (6236) Bonds which may be furnished by county, city or township officers. Whenever an official bond is required of any county, city or township officer, such officer may furnish either a surety company bond, or a good and sufficient individual bond, executed and approved as required by law or may furnish such other security as may be approved by the person, officer, or board authorized by law to examine and approve such official bond; provided, that where such officer shall furnish a surety company bond, the premium therefor shall be a proper charge against the general fund of the county, or city, as the case may be; provided, further, that the provisions of this section, making such premium a charge against the general fund of the county, city, town or township shall not be construed to include any deputy, clerk or subordinate officer, where a bond is required to be furnished by the principal or body appointing the same.

History: En. Sec. 3, Ch. 6, L. 1911; re-en. Sec. 6326, R. C. M. 1921; amd. Sec. 1, Ch. 145, L. 1923; amd. Sec. 1, Ch. 45, L. 1935; amd. Sec. 19, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted "state" before "county" in three places.

CHAPTER 27—THE COMMISSIONER OF INSURANCE

Section 40-2717. Examination expense.

40-2717. Examination expense. (1). * * * [Same as parent volume.]

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received pursuant to subsection (1) above.

(3). * * * [Same as parent volume.]

History: En. Sec. 36, Ch. 286, L. 1959; amd. Sec. 72, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote subsection (2). For previous text, see parent volume.

CHAPTER 28—AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

Section 40-2821. Tax.

40-2822. Resident agent required—countersignature—records—exceptions.

40-2821. Tax. (1). * * * [Same as parent volume.]

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums, the tax to be computed at the rate of two per cent (2%) of such premiums; provided that for each of the calendar years 1965 and 1966 the tax shall be computed at the rate of two and one-quarter per cent (2¼%) of such premiums.

Provided, that where any insurer has not less than fifty per cent (50%) of its paid-in capital stock invested in Montana securities, the insurer shall be allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section. For the purpose of this provision "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to ten per cent (10%) of the insurer's assets; and "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(3) to (8). * * * [Same as parent volume.]

History: En. Sec. 66, Ch. 286, L. 1959; amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965.

The 1965 amendment substituted "1965 and 1966" for "1963 and 1964" in the proviso to the first paragraph of subsection (2).

Amendments

The 1963 amendment substituted "1963 and 1964" for "1961 and 1962" in the proviso to the first paragraph of subsection (2).

Cross-Reference

Payments to cities and towns from proceeds of tax on motor vehicle insurance premiums, secs. 11-1834 to 11-1837.

40-2822. Resident agent required—countersignature—records—exceptions. (1) and (2). * * * [Same as parent volume.]

(3) This section shall not apply to:

(a) Reinsurance.

(b) Life insurance, disability insurance or annuity contracts.

(c) Insurance of the rolling stock, vessels or aircraft of any common carrier in interstate or foreign commerce, or of any vehicle principally garaged and used in another state, or covering any liability or other risks incident to the ownership, maintenance or operation thereof.

(d) Insurance of property in course of transportation interstate or in foreign trade, or any liability or risk incident thereto.

(e) Insurance of wet marine and transportation risks.

(f) With respect to countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business.

(g) Bid bonds, as required under section 6-501, R.C.M. 1947.

(4). * * * [Same as parent volume.]

History: En. Sec. 67, Ch. 286, L. 1959; Amendment
amd. Sec. 1, Ch. 72, L. 1963.

The 1963 amendment added clause (g)
to subsection (3).

CHAPTER 30—ASSETS AND LIABILITIES

Section 40-3011. Standard valuation law—life insurance.

40-3011. Standard valuation law—life insurance. (1) and (2). * * *
[Same as parent volume.]

(3) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 40-3831 (the standard nonforfeiture law).

(a) The minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in subdivision (b), three and one-half per cent ($3\frac{1}{2}\%$) interest, and the following tables:

(i) * * * [Same as parent volume.]

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 standard industrial mortality table for such policies issued prior to the operative date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioners 1961 standard industrial mortality table for such policies issued on or after such operative date.

(iii) to (vii) * * * [Same as parent volume.]

(b) and (c). * * * [Same as parent volume.]

(d) Reserves for any category of policies, contracts or benefits as established by the commissioner, may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Provided, however, that reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest [lower than the rate of interest] used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half per cent ($\frac{1}{2}\%$) the insurer issuing such policies shall file with the commissioner a plan providing

for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

(e). * * * [Same as parent volume.]

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965.

Compiler's Note

The compiler has inserted the bracketed words "lower than the rate of interest" in paragraph (3) (d). These words did not appear in the 1965 amendatory act, apparently through clerical error.

Amendment

The 1965 amendment added at the end of paragraph (3) (a) (ii) the words "for such policies issued prior to the operative

date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioners 1961 standard industrial mortality table for such policies issued on or after such operative date"; and, apparently through clerical error, deleted from paragraph (3) (d) the words enclosed above in brackets.

Effective Date

Section 2 of Ch. 41, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

CHAPTER 38—LIFE INSURANCE AND ANNUITIES

Section 40-3831. Standard nonforfeiture law—life insurance.

40-3831. Standard nonforfeiture law—life insurance. (1) to (3).

* * * [Same as parent volume.]

(4) Cash surrender value—life: Any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by subsection (2) of this section, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions if there had been no default, over the sum of:

(a) The then present value of the adjusted premiums as defined in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section, corresponding to premiums which would have fallen due on and after such anniversary, and

(b). * * * [Same as parent volume.]

(5) to (7). * * * [Same as parent volume.]

(7-a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in subsections (6) and (7) except that, for the purposes of (b), (c), and (d) of subsection (6), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

(8) Except as otherwise provided in subsections (8-a) and (8-b), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent ($3\frac{1}{2}\%$) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty per cent (130%) of the rates of mortality according to such applicable table, provided further that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(8-a). * * * [Same as parent volume.]

(8-b) In the case of industrial policies issued on or after the operative date of this subsection (8-b) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of commissioners 1961 standard industrial mortality table and the rate of interest, not exceeding three and one-half per cent ($3\frac{1}{2}\%$) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1961 industrial extended term insurance table. Provided, further, that for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (8-b), any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January first, nineteen hundred and sixty-eight.

(9) Calculation of values—life: Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event

of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (4), (5), (6), (7), (7-a), (8), (8-a) and (8-b) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (4) of this section, additional benefits payable:

(a) In the event of death or dismemberment by accident or accidental means,

(b) In the event of total and permanent disability,

(c) As reversionary annuity or deferred reversionary annuity benefits,

(d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply,

(e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and

(f) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits,

Shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(10) Exceptions. This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen (15) years or less expiring before age 66 for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section is less than the adjusted premiums so calculated on a policy issued at the same age and for the same initial amount of insurance for a term defined as follows: For ages at issue fifty (50) and under, the term shall be fifteen (15) years; thereafter, the term shall decrease one (1) year for each year of age beyond fifty (50).

(11). * * * [Same as parent volume.]

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965.

and (10); and made minor changes in punctuation in subsections (7-a) and (8).

Effective Date

Amendment

The 1965 amendment inserted subsection (8-b); inserted references to subsection (8-b) in subsections (4) (a), (8), (9),

Section 2 of Ch. 42, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

CHAPTER 39—GROUP LIFE INSURANCE

Section 40-3905.1. State employee groups.
40-3906. Debtor groups.

40-3905.1. State employee groups. All departments, bureaus, boards, commissions and agencies of the state of Montana are hereby authorized upon approval by a two-thirds ($\frac{2}{3}$) vote of the officers and employees of such departments, bureaus, boards, commissions and agencies to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents. The premiums required from time to time to maintain such insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct said premiums from the salary or wages of each officer or employee who elects to become insured, on the officer or employee's written order, and issue his warrant therefor to the insurer. For the purpose of this act, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health, or the services of hospitals, clinics or sanitariums, or both professional and hospital services, shall be construed as group insurance, and the dues payable under such plans shall be construed as premiums therefor.

History: En. Sec. 1, Ch. 248, L. 1963.

Effective Date

Section 2 of Ch. 248, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Title of Act

An act relating to group life and health insurance for state officers and employees and providing for payroll deductions.

40-3906. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the followings requirements:

(1) to (3). * * * [Same as parent volume.]

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor. Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of five years, except that such insurance may be continued for an additional period not exceeding six months in the case of default, extension or recasting of the loan.

(5). * * * [Same as parent volume.]

History: En. Sec. 333, Ch. 286, L. 1959; amd. Sec. 1, Ch. 132, L. 1965.

years" for "eighteen months" in the second sentence of subsection (4).

Amendment

The 1965 amendment deleted "or ten thousand dollars (\$10,000), whichever is less" at the end of the first sentence of subsection (4); and substituted "five

Repealing Clause

Section 2 of Ch. 132, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 44—CASUALTY INSURANCE CONTRACTS

Section 40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits.

40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits. Whenever an insurer accepts any premium, money or other consideration from a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity for casualty or liability insurance, neither such insured nor insurer shall raise the defense of sovereign or governmental immunity in any damage action brought against such insured or insurer, and any agreement in the insurance contract permitting the defense of sovereign or governmental immunity is hereby declared void. No attempt shall be made in the trial of an action brought against such political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity, to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff. If the court shall determine that the defendant could have successfully raised the defense of sovereign or governmental immunity, and if the verdict exceeds the limits of the applicable insurance, the court shall reduce the amount of such judgment or award to a sum equal to the applicable limit stated in the policy.

History: En. Sec. 1, Ch. 240, L. 1963.

Title of Act

An act prohibiting the defense of sovereign immunity where public bodies are insured; prohibiting the suggestion of insurance coverage in actions against public bodies, and providing for the reduction of awards to policy limits where

sovereign immunity defense could have been successfully raised; repealing all acts and parts of acts in conflict herewith.

Repealing Clause

Section 2 of Ch. 240, Laws 1963 repealed all acts and parts of acts in conflict therewith.

CHAPTER 47—ORGANIZATION AND CORPORATE PROCEDURES OF STOCK AND MUTUAL INSURERS

Section 40-4751. Equity securities of domestic stock insurance company—statement of ownership.

40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover.

40-4753. Short sales of equity securities prohibited—time for delivery after sale.

40-4754. Exemptions—securities held in an investment account—primary or secondary market.

40-4755. Exemptions—arbitrage transactions.

40-4756. "Equity security" defined.

40-4757. Exemptions—registered securities—holding by less than one hundred persons.

40-4758. Rules and regulations of commissioner—classifications—effect.

40-4751. Equity securities of domestic stock insurance company—statement of ownership. Every person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of any class of any equity security of a domestic stock insurance company, or who is a

director or an officer of such company, shall file with the commissioner of insurance within ten (10) days after he becomes such beneficial owner, director or officer, a statement in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter. If there has been a change in such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

History: En. Sec. 1, Ch. 159, L. 1965. domestic stock insurance company equity securities.

Title of Act

An act relating to insider trading of

40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two (2) years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

History: En. Sec. 2, Ch. 159, L. 1965.

40-4753. Short sales of equity securities prohibited—time for delivery after sale. It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of

good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

History: En. Sec. 3, Ch. 159, L. 1965.

40-4754. Exemptions—securities held in an investment account—primary or secondary market. The provisions of section 2 [40-4752] of this act shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 3 [40-4753] of this act shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a broker-dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

History: En. Sec. 4, Ch. 159, L. 1965.

40-4755. Exemptions—arbitrage transactions. The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of this act.

History: En. Sec. 5, Ch. 159, L. 1965.

40-4756. "Equity security" defined. The term "equity security" when used in this act means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

History: En. Sec. 6, Ch. 159, L. 1965.

40-4757. Exemptions—registered securities—holding by less than one hundred persons. The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to equity securities of a domestic stock insurance company if (a) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if (b) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred (100) or more persons on the last business day of the year next preceding the year in which equity securities of the company would

be subject to the provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act except for the provisions of this subsection (b).

History: En. Sec. 7, Ch. 159, L. 1965.

40-4758. Rules and regulations of commissioner—classifications—effect. The commissioner may make such rules and regulations as may be necessary for the execution of the functions vested in him by sections 1 through 7 [40-4751 to 40-4757] of this act, and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

History: En. Sec. 8, Ch. 159, L. 1965.

CHAPTER 54—EXTENDED HEALTH INSURANCE FOR OLDER PERSONS

- Section 40-5401. Purpose of act.
 40-5402. Definition of terms.
 40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage.
 40-5404. Agents authorized to write coverage.
 40-5405. Corporate powers of association—examination of books.
 40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association.
 40-5407. Filing with commissioner by association—deceptive practices prohibited.
 40-5408. Exemption of association from other laws.

40-5401. Purpose of act. It is the purpose of this act to provide a means of more adequately meeting the needs of persons who are 65 years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and experience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of Congress as expressed in the act of Congress of March 9, 1945 (Public Law 15, 79th Congress), as amended.

History: En. Sec. 1, Ch. 61, L. 1965.

Title of Act

An act relating to group accident and sickness insurance for persons 65 years of

age or older, and their spouses; providing regulation of such insurance by the commissioner of insurance; and providing an effective date.

40-5402. Definition of terms. Wherever used in this act, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(a) "Association" means a voluntary unincorporated association formed for the purpose of enabling co-operative action to provide disability insurance in accordance with this act in this or any other state having legislation enabling the issuance of insurance of the type provided in this act.

(b) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(c) "Extended health insurance" means hospital, surgical and medical expense insurance provided by a policy issued as provided by this act.

History: En. Sec. 2, Ch. 61, L. 1965.

40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage. Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers, to plan, develop, underwrite, and offer and provide to any person who is 65 years of age or older and to the spouse of such person, extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing and administering such insurance. The policyholder may be an association, a trustee, or any other person. Any such policy may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than 100 per cent of covered expenses which he is required to pay, and any insurer issuing individual policies providing extended hospital, surgical or medical benefits to persons 65 years of age and older and their spouses may also use such a policy provision. A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurance described in this act shall be another form of group disability insurance.

Any form of policy approved by the commissioner for an association shall be offered throughout Montana to all persons 65 and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancellable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled.

History: En. Sec. 3, Ch. 61, L. 1965.

40-5404. Agents authorized to write coverage. Notwithstanding the provisions of section 40-3316, any person licensed to transact disability insurance as an insurance agent, may transact extended health insurance and may be paid a commission thereon.

History: En. Sec. 4, Ch. 61, L. 1965.

40-5405. Corporate powers of association—examination of books. Any association formed for the purposes of this act, may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of such association. Any such association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process against such association, made upon a managing agent, any member thereof or any agent authorized by appointment to receive service of process, shall have the same force and effect as if such service had been made upon all members of the association. Such association's books and records shall also be subject to examination under the provisions of sections 40-2713 to 40-2719, inclusive, either separately or concurrently with examination of any of its member insurers.

History: En. Sec. 5, Ch. 61, L. 1965.

40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association. The forms of the policies, applications, certificates or other evidence of insurance coverage and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, certificate or other evidence of insurance, application or other form shall be sold, issued or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or 30 days shall have expired after such filing without written notice from the commissioner of disapproval thereof. The commissioner shall disapprove the forms for such insurance if he finds that they are unjust, unfair, inequitable, misleading or deceptive or that the rates are by reasonable assumptions excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred upon him by this act, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than 90 days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

If and when a program of hospital, surgical and medical benefits is enacted by the federal government or the state of Montana, the extended

health insurance benefits provided by policies issued under this act shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

The association shall submit an annual report to the insurance commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this act and the calendar year experience applicable to such insurance offered under this act, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report.

History: En. Sec. 6, Ch. 61, L. 1965.

40-5407. Filing with commissioner by association—deceptive practices prohibited. The articles of association of any association formed in accordance with this act, all amendments and supplements thereto, a designation in writing of a resident of this state as agent for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued, pursuant to this act shall not be such as to mislead or deceive the public.

History: En. Sec. 7, Ch. 61, L. 1965.

40-5408. Exemption of association from other laws. No act done, action taken or agreement made pursuant to the authority conferred by this act shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 8, Ch. 61, L. 1965.

Effective Date

Section 9 of Ch. 61, Laws 1965 pro-

vided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

REVISED CODES OF MONTANA

VOLUME 3

Part 2

1965 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 3 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3
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VOLUME I

1965

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CHAPTER 1—OBLIGATIONS OF EMPLOYERS

41-103. (7758) When not.

Assumption of Risk

Where master, in an action against him for injuries sustained by a servant during course of employment, introduced evidence tending to show that the servant had actual or implied knowledge of the dangerous condition but voluntarily remained in the face of the danger, and that

the injury resulted as a usual and probable consequence of the dangerous condition, then refusal of the trial court to instruct the jury properly on assumption of risk deprived defendant of a possible defense and was prejudicial error. *Wollan v. Lord*, 142 M 498, 385 P 2d 102.

CHAPTER 12—APPRENTICESHIP COUNCIL AND CONTRACTS

- Section 41-1201. Apprenticeship council.
41-1202. Duties of apprenticeship council.

41-1201. Apprenticeship council. (a) The governor of the state of Montana shall appoint an apprenticeship council, which shall be a part of the department of labor and industry, and shall consist of six (6) members, three (3) of whom shall be appointed from and be representative of active employers employing persons in recognized apprenticeable trades, and three (3) of whom shall be appointed from and be representative of active employee organizations whose members are employed in recognized apprenticeable trades. The terms of office of the members of the apprenticeship council first appointed by the governor of the state of Montana shall be as follows: One (1) representative each of employers and employees shall be appointed for one (1) year, two (2) years and three (3) years respectively. After the expiration of the original terms, each member shall be appointed by the governor of the state of Montana for a term of three (3) years. Each member shall hold office until his successor is appointed and has qualified, and any vacancy shall be filled by appointment by the governor of the state of Montana for the unexpired portion of the term. The commissioner of labor and industry, the state official who has been designated by the state board for vocational education as being in charge of trade and industrial education and the state official who has immediate charge of the state public employment service shall be ex officio members of said council without vote. The council shall elect

a chairman and vice-chairman from its voting membership, one (1) of which shall be a representative of employers and one (1) shall be a representative of employees, and each shall hold office for a term of one (1) year and until his successor is elected.

(b) to (d). * * * [Same as parent volume.]

(e) The commissioner of labor and industry may, subject to the approval of the appointed members of the council, appoint a director of apprenticeship and such other clerical, technical and professional staff as shall be necessary to carry out the provisions of this act. The director of apprenticeship shall serve as the secretary of the council, without a vote.

History: En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963.

Amendment

The 1963 amendment completely rewrote subsection (a), for previous version of which see parent volume; and added subsection (e).

41-1202. Duties of state apprenticeship council. The state apprenticeship council by a majority vote, shall:

(1) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this act;

(2) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this act;

(3) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship;

(4) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who

(5) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Related and supplemental instruction for apprentices, co-ordination of instruction with job experiences, and the selection and training of teachers and co-ordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963.

Amendment

The 1963 amendment deleted a final

sentence which read, "The voting members of the apprenticeship council are authorized to appoint such other personnel as may be necessary to aid the apprenticeship council in the execution of their functions under this act."

CHAPTER 16—DEPARTMENT OF LABOR AND INDUSTRY

Section 41-1603. Commissioner of labor and industry—term—salary—oath.

41-1603. Commissioner of labor and industry—term—salary—oath. The term of office of the commissioner of labor and industry shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary of not more than seven thousand five hundred dollars (\$7,500), payable monthly. Before entering on the

duties of his office, he must take and subscribe to the oath of office prescribed by section 1, article XIX of the Montana Constitution.

History: En. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965.

The 1965 amendment deleted an opening clause relating to the term of office of the commissioner appointed in 1951; deleted "appointed thereafter" after "commissioner of labor and industry" in the first sentence; and deleted "and execute an official bond in the amount of one thousand dollars (\$1,000)" from the end of the section.

Amendments

The 1963 amendment substituted the provision for a maximum salary of \$7,500 for a provision fixing the salary at \$6,000.

CHAPTER 19—WINTER WORK PROGRAMS

- Section 41-1901. Definition of terms.
 41-1902. Municipal winter work committees authorized—composition and appointment of members.
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 41-1906. State employment service to co-operate.
 41-1907. Minutes of work committee filed—availability to legislators.

41-1901. Definition of terms. As used in this act (1) "Winter work program" means a program to promote and encourage the accomplishment of work that would alleviate the rolls of the unemployed during the winter months.

(2) "Winter work committee" is a local committee appointed to effect the program.

History: En. Sec. 1, Ch. 68, L. 1965.

Title of Act

An act concerning a winter work program.

41-1902. Municipal winter work committees authorized—composition and appointment of members. The mayor of any municipality may appoint a winter work committee composed of at least five (5) members. The members shall be from various economic groups including labor, industry, business, welfare and news media. In municipalities where the economic groups are represented by organizations, the mayor shall give notice to each organization that he is going to make the appointments and shall set a date by which names must be submitted. On the date set for submittal, he shall select one member from each of the economic groups.

History: En. Sec. 2, Ch. 68, L. 1965.

41-1903. Terms of work committee members—no compensation. Original appointments shall be for five (5), four (4), three (3), two (2) and one (1) years. The original terms shall be determined by lot. After the original appointments have expired, terms shall be for five (5) years. There shall be no compensation for service on this committee.

History: En. Sec. 3, Ch. 68, L. 1965.

41-1904. Meetings and officers of work committee. The committee shall meet within ten (10) days of appointment by the mayor. They shall

select a chairman and a secretary and other necessary officers. Thereafter, the committee shall meet at least quarterly and at such other times as may be necessary, convenient or desired.

History: En. Sec. 4, Ch. 68, L. 1965.

41-1905. Promotion of winter work program. The committee shall work through public service advertising and through public relations to promote the winter work program.

History: En. Sec. 5, Ch. 68, L. 1965.

41-1906. State employment service to co-operate. The employees of free public employment offices of the Montana state employment service shall co-operate with the committee.

History: En. Sec. 6, Ch. 68, L. 1965.

41-1907. Minutes of work committee filed—availability to legislators. Minutes of the meetings of the committee shall be filed by the secretary of the committee with the mayor of the municipality who shall keep them as other public records. Members of the legislative assembly may use these minutes to determine the employment problems of the municipalities involved.

History: En. Sec. 7, Ch. 68, L. 1965.

CHAPTER 20—RESTAURANT, BAR AND TAVERN WAGE PROTECTION ACT

- Section 41-2001. Short title.
 41-2002. Bond required of lessee.
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 41-2005. Bond to be filed by lessee—amount—ownership affidavit.
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 41-2008. Lessee's business enjoined until bond filed.
 41-2009. Certification of lessee on filing of bond.
 41-2010. New or additional bond—sureties.
 41-2011. Disposition of fees.

41-2001. Short title. This act shall be known as the Restaurant, Bar and Tavern Wage Protection Act.

History: En. Sec. 1, Ch. 155, L. 1965.

Title of Act

An act requiring the lessee of restaurants, bars or taverns to file payroll

bonds for the protection of employees of lessees where the equipment, appliances, and other accessories necessary for the conduct of business therein at the place of business are owned by the lessor.

41-2002. Bond required of lessee. From and after the effective date of this act, it shall be unlawful for any person to lease a premise to be used as the place for conducting a restaurant, bar or tavern business, where the equipment, appliances and other accessories necessary for the conduct of business therein are owned by the lessor, without first having filed with the commissioner of labor and industry a bond in accordance with the requirements of section 5 [41-2005] of this act.

History: En. Sec. 2, Ch. 155, L. 1965.

41-2003. Purpose of act. The purpose of this act is to protect employees of lessees conducting business as restaurants, bars and taverns employed under the circumstances of ownership of the equipment, appliances and other accessories as outlined in section 2 [41-2002] of this act and to assure the payment of wages to such employees in the event the lessee ceases operation of his business and is unable to pay the wages due and owing to his employees.

History: En. Sec. 3, Ch. 155, L. 1965.

41-2004. Definition of terms. For the purposes of this act the words and phrases used herein have the following meaning: (1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessor" means one who has leased premises, equipment, appliances or accessories for a definite or indefinite period, by a written or parol lease.

(4) "Lessee" means one to whom a lease is made.

(5) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(6) "Liquor" means and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor, which contains more than one per centum (1%) of alcohol by weight, but shall not mean or include beer as that term is defined in the Montana Beer Act by subsection (b) of section 4-302, Revised Codes of Montana, 1947.

(7) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products, in drinkable water, containing not more than four per centum (4%) alcohol by weight.

(8) "Employee" means a person who works for wages or salary in the service of an employer.

(9) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

(10) "Equipment" means the articles, furnishings, supplies and apparatus used in a business.

(11) "Appliances" means all devices and apparatus used in the conduct of business.

(12) "Accessories" means those articles, furnishings, supplies, devices and other apparatus which are used in and contribute in a secondary way, along with the appliances and equipment, to the conduct of a business.

History: En. Sec. 4, Ch. 155, L. 1965.

41-2005. Bond to be filed by lessee—amount—ownership affidavit. Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar or tavern, or who

leases equipment, appliances or accessories for such purpose, is hereby required to file a bond equal to at least double the amount of the semi-monthly payroll with the commissioner of labor and industry and an affidavit showing the name of the owner of the equipment, appliances and other accessories necessary for the conduct of business therein.

History: En. Sec. 5, Ch. 155, L. 1965.

41-2006. Time of filing of bond—terms of bond—maintenance of bond required. The bond and affidavit required by section 5 [41-2005] of this act shall be filed with the commissioner of labor and industry by July 1 and February 1 of each year. The state of Montana shall be named as the obligee therein with good and sufficient sureties to be approved by the attorney general of the state of Montana. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom shall automatically revoke and suspend the certificate issued to the lessee therein as provided in section 9 [41-2009] of this act until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided. Such bond shall be conditioned to assure that in any lease transaction of the type referred to in section 2 [41-2002] of this act the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business, for any reason, and is unable to pay the wages due and owing the employees.

History: En. Sec. 6, Ch. 155, L. 1965.

41-2007. Liability of lessor and lessee for unpaid wages. Upon non-payment of wages, if no bond has been filed as provided for in this act, the employees of the lessee may recover from either the lessor or lessee who shall be jointly and severally liable in accordance with the provisions of sections 41-1302 and 41-1306, Revised Codes of Montana, 1947.

History: En. Sec. 7, Ch. 155, L. 1965.

41-2008. Lessee's business enjoined until bond filed. If any person engages in the restaurant, bar or tavern business, as lessee, without having first filed a bond as required by section 5 [41-2005] of this act, the attorney general of the state of Montana, the commissioner of labor and industry of the state of Montana, or any citizen, group of citizens or any association in the county where the violator conducts his business may institute an action to enjoin such person from engaging in the business until compliance with this act has been met.

History: En. Sec. 8, Ch. 155, L. 1965.

41-2009. Certification of lessee on filing of bond. Upon filing a bond as required by section 5 [41-2005] of this act and after payment of two (\$2) dollars, as application fee, the commissioner of labor and industry shall issue to the lessee applying a certificate stating that the lessee is duly bonded and entitled to conduct a restaurant, bar or tavern business in the state of Montana.

History: En. Sec. 9, Ch. 155, L. 1965.

41-2010. New or additional bond—sureties. The commissioner of labor and industry may require a new bond or a bond of a greater amount than double the semimonthly payroll whenever the commissioner deems it necessary for the protection of the employees of a lessee. The commissioner may, after due notice given, discharge the existing sureties from further liability and require that other sureties be provided.

History: En. Sec. 10, Ch. 155, L. 1965.

41-2011. Disposition of fees. All fees and moneys collected pursuant to section 9 [41-2009] of this act shall be credited to a special account to be known as the restaurant, bar and tavern employees wage protection fund, and shall be used by the commissioner of labor and industry to carry out the provisions of this act.

History: En. Sec. 11, Ch. 155, L. 1965.

Separability Clause

Section 12 of Ch. 155, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

TITLE 42—LANDLORD AND TENANT—HIRING

CHAPTER 2—HIRING OF REAL PROPERTY—OF PERSONAL PROPERTY

42-203. (7743) Term of hiring when no limit is fixed.

Construction of Oral Farm Lease

Judgment for tenant in action for construction of an oral farm lease was reversed and the case was remanded for a new trial where the evidence was insufficient to show either a mutual agreement or usage and the record was completely confused as to when the lease commenced. *Enott v. Hinkle*, 140 M 206, 369 P 2d 413, 414.

Notice to Quit

Landlord could not maintain an action for unlawful detainer where notice to quit was not given to tenant thirty days prior to expiration of year to year tenancy. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

Oral Lease

Under this section it is possible to have an oral lease for at least one year without an expression as to time therein. This is consistent with section 13-606, statute of frauds, which voids an oral agreement for the leasing of realty of a period longer than one year. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 89.

Entry by a tenant under an invalid oral lease may create a tenancy from year to year, month to month, or a tenancy at will depending upon the circumstances. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 89.

42-205. (7745) Renewal of lease by lessee's continued possession.

Notice to Quit

Where notice to quit was not given by landlord to tenant thirty days prior to expiration of year to year tenancy, tenancy was deemed to be renewed for another year and unlawful detainer action could not be maintained by landlord. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

42-206. (7746) Notice to quit.

Time for Giving Notice

An action in unlawful detainer cannot be maintained under section 93-9703 if the tenant is lawfully in possession under a tenancy from year to year without first

Presumption as to Term

When tenant, pursuant to an oral agreement, entered into possession of property on April 1, 1957 to conduct a meat processing and selling business, his hiring of the property was presumed to be for one year from its commencement. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 89.

The presumption that hiring is to be for one year is a rebuttable presumption. If the presumption is not controverted, the facts must be found according to the presumption. If it is controverted, the presumption must be given weight as evidence. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

Tenancy from Month to Month

Payment of a monthly rental does not compel the conclusion that a tenancy is from month to month where other facts indicate to the contrary. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

Tenancy from Year to Year

Where tenant hired property for meat business under an oral agreement the tenancy was initially for a year with implied renewals for one year resulting in a tenancy from year to year. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

Tenancy from Year to Year

Where property was hired for meat business under section 42-203 the tenancy was initially for a year with implied renewal for one year resulting in a tenancy from year to year. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

giving notice thirty days prior to the anniversary date of the tenancy. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

TITLE 43—LEGISLATURE AND ENACTMENT OF LAWS

- Chapter 3. The powers, duties and compensation of members, officers and employees of the legislative assembly, 43-310.
8. Lobbying, 43-803.
 10. Fiscal notes in legislative bills, 43-1001 to 43-1006.

CHAPTER 2—THE LEGISLATIVE ASSEMBLY—ITS COMPOSITION, ORGANIZATION, OFFICERS AND EMPLOYEES

43-211 to 43-214. (61 to 64) Repealed.

Repeal

These sections (Sec. 9, p. 90, L. 1885; Secs. 1 to 3, p. 170, L. 1891; Secs. 1, 2, Ch. 1, L. 1915; Sec. 1, Ch. 44, L. 1937; Sec. 1, Ch. 50, L. 1937; Sec. 1, Ch. 23, L. 1939;

Sec. 1, Ch. 1 and Sec. 1, Ch. 3, L. 1943), relating to officers and employees of the legislative assembly and providing for compelling attendance of legislators, were repealed by Sec. 4, Ch. 1, Laws 1965.

CHAPTER 3—THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY

Section 43-310. Per diem, mileage and expenses of members.

43-302, 43-303. (66, 67) Repealed.

Repeal

These sections (Secs. 201, 202, Pol. C. 1895), relating to the secretary of the

senate, the clerk of the house, and their assistants, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-305 to 43-309. (69 to 73) Repealed.

Repeal

These sections (Sec. 6, p. 171, L. 1891; Secs. 204 to 207, 209, Pol. C. 1895; Sec. 3, Ch. 1, L. 1915; Sec. 1, Ch. 210, L. 1943), relating to the sergeants-at-arms, the en-

grossing clerks and enrolling clerks, and other officers and employees of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-310. (74) **Per diem, mileage and expenses of members.** (1) Members of the legislative assembly hereafter elected shall receive twenty dollars (\$20.00) per day, payable weekly, during the session of the legislative assembly, and eight cents (8¢) per mile for each mile of travel to and from their residences and the place of holding the session, by the nearest traveled route.

(2) Members shall also receive fifteen dollars (\$15.00) per day, payable weekly during the session of the legislative assembly, as reimbursement for expenses incurred in attending the session.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1955; amd. Sec. 1, Ch. 32, L. 1963; amd. Sec. 1, Ch. 180, L. 1965. Cal. Pol. C. Sec. 266.

Amendments

The 1963 amendment increased the mileage allowance from seven to eight cents per mile.

The 1965 amendment designated the former section as subsection (1) and added subsection (2).

43-312 to 43-317. (76 to 78.3) Repealed.**Repeal**

These sections (Secs. 222, 223, Pol. C. 1895; Sec. 3, Ch. 45, L. 1909; Sec. 1, Ch. 37, L. 1913; Secs. 4, 5, Ch. 1, L. 1915; Sec. 1, Ch. 115, L. 1917; Secs. 1 to 3, Ch. 112, L. 1927; Sec. 1, Ch. 6, L. 1935; Sec.

2, Ch. 50, L. 1937; Sec. 2, Ch. 1 and Sec. 2, Ch. 3, L. 1943), relating to the compensation of legislative officers and employees and to property of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

CHAPTER 8—LOBBYING

Section 43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement.

43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement. (1) Licenses—fees—eligibility. Any person of adult age and good moral character who is a citizen of the United States and otherwise qualified under this act may be licensed as a lobbyist as herein provided. The secretary of state shall provide for the form of application for license. Such application may be obtained in the office of the secretary of state and filed therein. Upon approval of such application and payment of the license fee of ten dollars (\$10.00) to the secretary of state, a license shall be issued which shall entitle the licensee to practice lobbying on behalf of any one or more principals. Each license shall expire on December 31 of each odd-numbered year. No application shall be disapproved without affording the applicant a hearing which shall be held and decision entered within ten (10) days, of the date of filing of the application. The license fees collected by the secretary of state under this act shall be deposited by him in the state treasury.

(2) Suspension or revocation of license. Upon verified complaint in writing to the attorney general of the state of Montana charging the holder of a license with having been guilty of unprofessional conduct or with having procured his license by fraud or perjury or through error, the attorney general is hereby authorized to bring civil action in the district court for Lewis and Clark county, state of Montana, against the holder and in the name of the state as plaintiff to revoke the license. Hearing shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible and at least twenty (20) days after the filing of the charges and shall take precedence over all other matters pending before the court. If the court finds for the plaintiff judgment shall be rendered revoking the license, and the clerk of the court shall file a certified copy of the judgment with the secretary of state. The licensing authority may commence any such action on his own motion.

(3). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965.

Amendment

The 1965 amendment deleted "in a special fund to be known as the 'Lobby Li-

cense Fund' which fund is to be expended in the manner hereinafter provided" at the end of subsection (1); and deleted from subsection (2) a former fifth sentence which read: "Costs shall be paid from the 'Lobby License Fund'."

CHAPTER 10—FISCAL NOTES IN LEGISLATIVE BILLS

- Section 43-1001. Committee reports to include fiscal notes—need determined on introduction of bill.
- 43-1002. Budget director to prepare note.
- 43-1003. Note referred to committee—distribution to legislators on report of bill.
- 43-1004. Contents of fiscal notes.
- 43-1005. Note requested by committee or house.
- 43-1006. Background information available to legislators.

43-1001. Committee reports to include fiscal notes—need determined on introduction of bill. All bills reported out of a committee of the legislative assembly having an effect on the revenues, expenditures or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.

History: En. Sec. 1, Ch. 53, L. 1965.

note in all bills having an effect on the revenues, expenditures or fiscal liability of the state.

Title of Act

An act requiring the inclusion of a fiscal

43-1002. Budget director to prepare note. The state budget director, in co-operation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return same within six (6) days.

History: En. Sec. 2, Ch. 53, L. 1965.

43-1003. Note referred to committee—distribution to legislators on report of bill. A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. If the bill is printed, the note shall be mimeographed and placed on the members' desks.

History: En. Sec. 3, Ch. 53, L. 1965.

43-1004. Contents of fiscal notes. Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

History: En. Sec. 4, Ch. 53, L. 1965.

43-1005. Note requested by committee or house. A fiscal note also may be requested on a bill by:

(1) A committee considering the bill, or

(2) A majority of the members of the house in which the bill is to be considered, at the time of second reading; providing, however, section 5 [this section] of this act shall not apply six (6) days before the close of transmittal of bills and/or shall not apply after the fifty-fourth day.

History: En. Sec. 5, Ch. 53, L. 1965.

43-1006. Background information available to legislators. The budget director shall make available on request to any member of the legislative assembly all background information used in developing a fiscal note.

History: En. Sec. 6, Ch. 53, L. 1965.

TITLE 44—LIBRARIES

- Chapter 1. The state library of Montana, 44-127, 44-131.
2. County and regional free libraries, 44-213.
4. State law library, 44-404, 44-410, 44-412.
5. Historical society—library and museum, 44-516 to 44-528.

CHAPTER 1—THE STATE LIBRARY OF MONTANA

- Section 44-127. State library commission created.
44-131. Powers of state library commission.

44-127. (1575.1) State library commission created. A commission is hereby created to be known as the state library commission. This commission shall consist of the librarian of the state university, the state superintendent of public instruction, ex officio member, and the three members to be appointed by the governor, who shall serve one, two and three years respectively. As these terms expire, annually thereafter one person shall be appointed, for a term of three years. The commission shall annually elect a chairman from its membership. The members of said commission shall receive no compensation for their services except their actual and necessary expenses.

History: En. Sec. 1, Ch. 184, L. 1929; amd. Sec. 1, Ch. 91, L. 1945; amd. Sec. 1; Ch. 55, L. 1961; amd. Sec. 1, Ch. 215, L. 1965.

Amendment

The 1965 amendment deleted "as chairman" after "librarian of the state university" in the second sentence; and inserted the fourth sentence.

44-129, 44-130. (1575.3, 1575.4) Repealed.

Repeal

These sections (Secs. 3, 4, Ch. 91, L. 1945; Sec. 3, Ch. 55, L. 1961), relating to

powers and duties of the state library commission, were repealed by Sec. 3, Ch. 215, Laws 1965.

44-131. Powers of state library commission. The state library commission shall have the power: (1) To give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns or regions in the state which may propose to establish libraries, as to the best means of establishing and improving such libraries;

(2) To maintain and operate the state library and make provision for its housing;

(3) To accept and to expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes;

(4) To make rules and regulations and establish standards for the administration of the state library, and for the control, distribution and lending of books and materials;

(5) To serve as the agency of the state to accept and administer any state, federal or private funds or property appropriated for or granted to

it for library service or to foster libraries in the state and to establish regulations under which funds shall be dispersed;

(6) To provide library services for the blind;

(7) To furnish, by contract or otherwise, library assistance and information services to state officials, state departments and residents of those parts of the state inadequately serviced by libraries;

(8) To act as a state board of professional standards and library examiners and develop standards for public libraries and adopt rules and regulations for the certification of librarians.

History: En. Sec. 2, Ch. 215, L. 1965.

Repealing Clause

Title of Act

An act amending section 44-127, R. C. M. 1947, defining the powers and duties of the state library commission; and repealing sections 44-129 and 44-130, R. C. M. 1947.

Section 3 of Ch. 215, Laws 1965 read "Sections 44-129 and 44-130, R. C. M. 1947, are repealed."

CHAPTER 2—COUNTY AND REGIONAL FREE LIBRARIES

Section 44-213. Participation of other governmental units.

44-213. Participation of other governmental units. When a joint county or regional library shall have been established, the legislative body of any government unit therein that is maintaining a library may decide, with the concurrence of the board of trustees of its library, to participate in the joint county or regional library; after which, beginning with the next fiscal year of the county, the governmental unit shall participate in the joint county or regional library and its residents shall be entitled to the benefits of the joint county or regional library, and property within its boundaries shall be subject to taxation for joint county or regional library purposes. A governmental unit participating in the joint county or regional library may retain title to its own property, continue its own board of library trustees, and may levy its own taxes for library purposes; or, by a majority vote of the qualified electors, a governmental unit may transfer, conditionally or otherwise, the ownership and control of its library, with all or any part of its property, to another governmental unit which is providing or will provide free library service in the territory of the former, and the trustees or body making the transfer shall thereafter be relieved of responsibility pertaining to the property transferred. The state board of education may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the university of Montana is located for the establishment and operation of joint library facilities. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library facilities established pursuant to this section shall be operated and supported as provided in such contract and under this chapter.

History: En. Sec. 2, Ch. 132, L. 1939; amd. Sec. 1, Ch. 249, L. 1963.

Amendment

The 1963 amendment added the third, fourth, and fifth sentences.

Effective Date

Section 2 of Ch. 249, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

CHAPTER 4—STATE LAW LIBRARY

- Section 44-404. Librarian—term of office.
 44-410. Accounts—approval.
 44-412. Assistance in preparing index.

44-404. Librarian—term of office. The librarian appointed by the board shall hold office for the term of two (2) years, unless sooner removed by a majority vote of the trustees.

History: En. Sec. 4, Ch. 153, L. 1949; amd. Sec. 21, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted a second sentence reading, "The librarian must execute an official bond, in the sum of one thousand dollars (\$1,000.00), to be approved by the chief justice, and deposited with the secretary of state."

44-407. Repealed.**Repeal**

This section (Sec. 7, Ch. 153, L. 1949), relating to the state law library fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

44-410. Accounts—approval. All accounts for the proofing and printing of books, legal periodicals, library collections, furniture, fixtures and supplies must be prepared by the librarian, submitted to and approved by at least one (1) member of the board of trustees.

History: En. Sec. 10, Ch. 153, L. 1949; amd. Sec. 13, Ch. 97, L. 1961; amd. Sec. 85, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "and thereafter paid out of the state treasury from the library fund" at the end of the section.

44-412. Assistance in preparing index. The law librarian is authorized and empowered to engage and employ stenographic assistance in the preparation of such indexes.

History: En. Sec. 12, Ch. 153, L. 1949; amd. Sec. 86, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "and said assistant shall be paid out of the library fund" at the end of the section.

CHAPTER 5—HISTORICAL SOCIETY—LIBRARY AND MUSEUM

- Section 44-516. Historical society continued and perpetuated—purposes.
 44-517. Definition of terms.
 44-518. Library and museum independent of other state institutions.
 44-519. Board of trustees—appointment and terms of members.
 44-520. Qualifications of trustees.
 44-521. Executive committee of trustees.
 44-522. Reimbursement of trustees.
 44-523. Powers and duties of trustees.
 44-524. Director's responsibility—assistants and employees.
 44-525. Official seal of society.
 44-526. Furnishings and fittings in veterans' and pioneers' building.
 44-527. Fund raising drives—revenues and receipts.
 44-528. Fine arts' commission abolished.

44-501 to 44-515. Repealed.**Repeal**

These sections (Secs. 1 to 15, Ch. 134, L. 1949; Secs. 14, 19, Ch. 97, L. 1961), relating to the historical society and the historical library and museum, were repealed by Sec. 14, Ch. 47, Laws 1963.

Sections 46 to 48, Ch. 147, Laws 1963, purported to amend sections 44-509, 44-510, and 44-514, respectively; however, under the rule of section 43-515, such amendments were void and did not revive the amended sections.

44-516. Historical society continued and perpetuated—purposes. The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana, entitled “an act to incorporate the historical society of Montana,” approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved March 4, 1891, entitled “an act concerning the historical society for the state of Montana and making an appropriation therefor,” and by “an act to perpetuate the historical society of the state of Montana,” approved March 1, 1949, is hereby continued and perpetuated as the “Montana Historical Society” and as such constitutes an agency of state government for the use, learning, culture and enjoyment of the citizens of the state and for the acquisition, preservation and protection of historical records, art archival and museum objects, historical places, sites and monuments and the custody, maintenance and operation of the historical library, museums, art galleries, and historical places, sites and monuments.

History: En. Sec. 1, Ch. 47, L. 1963.

Title of Act

An act continuing and perpetuating the Montana historical society and prescribing the powers and duties of the board of trustees of the society; abolishing the Montana fine arts' commission; and repealing sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947.

tees of the society; abolishing the Montana fine arts' commission; and repealing sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947.

44-517. Definition of terms. As used in this act, (1) “Society” means the Montana historical society and includes

- (a) The historical and miscellaneous libraries and their contents;
- (b) Any museums and art galleries, and their contents, acquired by the trustees;
- (c) Any historical places, sites or monuments acquired or developed by the society;
- (d) Any divisions, departments and activities operated in conjunction with the historical library as are established by the trustees; and
- (e) Any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture or fixtures acquired by the trustees.

(2) “Trustees” means the board of trustees of the Montana historical society.

(3) “Committee” means the executive committee of the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 47, L. 1963.

44-518. Library and museum independent of other state institutions. Any historical library or museum administered by the society in accordance with the provisions of this act shall be independent of any other library, museum, or gallery owned, maintained or operated by the state of Montana.

History: En. Sec. 3, Ch. 47, L. 1963.

44-519. Board of trustees—appointment and terms of members. The government and administration of the society is vested in a board of fifteen (15) trustees, appointed by the governor, by and with the consent of the senate. Three (3) each of the original members of the board shall be appointed for one (1), two (2), three (3), four (4) and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

History: En. Sec. 4, Ch. 47, L. 1963.

44-520. Qualifications of trustees. Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest and to serve without compensation. The governor shall in so far as possible, appoint trustees from the various geographical areas of the state.

History: En. Sec. 5, Ch. 47, L. 1963.

44-521. Executive committee of trustees. The trustees may select an executive committee of five (5) trustees and delegate to the committee such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

History: En. Sec. 6, Ch. 47, L. 1963.

44-522. Reimbursement of trustees. The trustees shall serve without compensation, but may be reimbursed for mileage.

History: En. Sec. 7, Ch. 47, L. 1963.

44-523. Powers and duties of trustees. The powers and duties of the trustees are as follows:

(1) To elect annually from among their number a president, a vice-president, and a secretary.

(2) To adopt bylaws for their own government, and to make rules and regulations, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people.

(3) To appoint a director, fix his salary, and prescribe his duties and responsibilities.

(4) To create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships.

(5) To sell or exchange publications and surplus copies of books or other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art.

(6) To see that the collections and properties of the society are maintained in good order and repair.

(7) To report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(8) To accept, receive and administer in the name of the society, any gifts, donations, properties, securities, bequests and legacies that may be made to the society. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(9) To collect, assemble, preserve and display where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular, and generally of the Pacific Northwest, Northern Rocky Mountain and Northern Great Plains regions, and of the United States of America when pertinent; to procure from pioneers, early settlers and others, narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west and all other related documents of Montana's history, development and society; to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military and pioneer artifacts and implements; to collect and preserve such natural history objects as fossils, plants, minerals and animals; to collect and preserve books, maps, manuscripts and other materials as will tend to facilitate historical, scientific, and antiquarian research; to promote the study of Montana history by lectures and publications; to generally foster and encourage the fine arts and cultural activities in Montana; to receive for and on behalf of the state by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere; and to microfilm papers or documents in danger of disappearance or injury.

History: En. Sec. 8, Ch. 47, L. 1963.

44-524. Director's responsibility—assistants and employees. The director is fully responsible for the immediate direction, management and control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

History: En. Sec. 9, Ch. 47, L. 1963.

44-525. Official seal of society. The design of the official seal of the society shall be substantially as follows: A central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background and directly beneath it the figures "1865." The seal shall be two inches in diameter and surrounded by the words, "Montana Historical Society Seal."

History: En. Sec. 10, Ch. 47, L. 1963.

44-526. Furnishings and fittings in veterans' and pioneers' building. The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished and maintained in dignity and in harmony with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

History: En. Sec. 11, Ch. 47, L. 1963.

44-527. Fund raising drives—revenues and receipts. The society may engage in such fund raising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, magazines, pamphlets, and museum objects which are appropriate and will bring credit to the society and to Montana. It may also receive fees, commissions and royalties on the display and sale of arts and crafts. All profits, revenues, royalties or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development and operation of the society.

History: En. Sec. 12, Ch. 47, L. 1963.

Sale of Ancient Warrants

Chapter 134, Laws 1963, effective until June 30, 1965, provides for sale of certain old territorial and state warrants by the territorial centennial commission. The act reads: "An act to authorize and direct the state auditor to deliver certain warrants to the Montana territorial centennial commission.

"Section 1. The state auditor is hereby authorized and directed to deliver to the Montana territorial centennial commission all remaining territorial warrants and all state warrants dated prior to 1899 in

his possession. The commission shall sell these warrants in any manner they see fit, upon authorization by the state controller.

"Section 2. All money realized from the sale of these warrants shall be deposited with the state treasurer to the credit of the Montana territorial centennial commission and warrants issued upon authority of officers of the commission.

"Section 3. This act is effective from July 1, 1963, to June 30, 1965. On June 30, 1965, the existence of the commission shall cease, and all moneys of the commission shall be transferred to the state general fund."

44-528. Fine arts' commission abolished. The Montana fine arts' commission is abolished. All records, property and moneys of the Montana fine arts' commission are transferred to the society.

History: En. Sec. 13, Ch. 47, L. 1963.

Repealing Clause

Section 14 of Ch. 47, Laws 1963 read "Sections 44-501, 44-502, 44-503, 44-504,

44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947, are repealed."

TITLE 45—LIENS

- Chapter 1. Liens in general, definitions, creation and effect, 45-109, 45-112, 45-116.
3. Redemption from liens—extinction, 45-301, 45-308.
7. Crop liens for seed, grain and hail insurance, 45-704, 45-707.
8. Threshermen's liens, 45-809.
9. Farm laborers' liens, 45-911.
10. Laborers' and materialmen's liens on oil and gas wells and pipelines, 45-1003.
11. Miscellaneous liens, 45-1106, 45-1107.
13. Stoppage in transit, Repealed—Section 10-102, Chapter 264, Laws of 1963.
14. Crop or grain lien for dusting or spraying, 45-1410.

CHAPTER 1—LIENS IN GENERAL, DEFINITIONS, CREATION AND EFFECT

- Section 45-109. Lien on future interest.
45-112. Certain contracts void.
45-116. Holder of lien not entitled to compensation.

45-106. (8224) Repealed.

Repeal

This section (Sec. 3735, Civ. C. 1895), relating to mortgages and pledges, was

repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-109. (8227) Lien on future interest. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. Except as otherwise provided by the Uniform Commercial Code, in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest. [Effective January 1, 1965.]

History: En. Sec. 3742, Civ. C. 1895; re-en. Sec. 5712, Rev. C. 1907; re-en. Sec. 8227, R. C. M. 1921; amd. Sec. 11-118, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2883. Field Civ. C. Sec. 1589.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the second sentence.

45-112. (8230) Certain contracts void. Except as otherwise provided by the Uniform Commercial Code: all contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void. [Effective January 1, 1965.]

History: En. Sec. 3751, Civ. C. 1895; re-en. Sec. 5715, Rev. C. 1907; re-en. Sec. 8230, R. C. M. 1921; amd. Sec. 11-119, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2889. Based on Field Civ. C. Sec. 1592.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-116. (8234) Holder of lien not entitled to compensation. Except as otherwise provided by the Uniform Commercial Code: One who holds property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting

it, except to the same extent as a borrower, under sections 47-109 and 47-110. [Effective January 1, 1965.]

History: En. Sec. 3755, Civ. C. 1895; re-en. Sec. 5719, Rev. C. 1907; re-en. Sec. 8234, R. C. M. 1921; amd. Sec. 11-120, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2892. Field Civ. C. Sec. 1596.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 3—REDEMPTION FROM LIENS—EXTINCTION

Section 45-301. Right to redeem.

45-308. When restoration extinguishes lien.

45-301. (8238) Right to redeem. Except as otherwise provided by the Uniform Commercial Code, every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed. [Effective January 1, 1965.]

History: En. Sec. 3780, Civ. C. 1895; re-en. Sec. 5723, Rev. C. 1907; re-en. Sec. 8238, R. C. M. 1921; amd. Sec. 11-121, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2903.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-308. (8245) When restoration extinguishes lien. Except as otherwise provided by the Uniform Commercial Code: the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration. [Effective January 1, 1965.]

History: En. Sec. 3794, Civ. C. 1895; re-en. Sec. 5730, Rev. C. 1907; re-en. Sec. 8245, R. C. M. 1921; amd. Sec. 11-122, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2913. Based on Field Civ. C. Sec. 1607.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 4—LOGGERS' LIENS

45-401. (8318) Who entitled to lien.

Persons Entitled to Lien

A logging corporation acting in the capacity of an independent contractor was not a "person" as set forth in this chap-

ter and was not entitled to a lien thereunder. *Jack Long Logging Co. v. Pyramid Mountain Lumber, Inc.*, 143 M 87, 387, P 2d 712.

CHAPTER 5—MECHANICS' LIENS

45-501. (8339) Who entitled to lien.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Abandoned Improvements—Delay in Completion

Where contract specifically said that contractor's ability to continue work would be dependent upon prompt payment by owner as agreed and owner did not pay as

agreed, contractor was allowed foreclosure of lien even though he was unable to complete the work. *Gramm v. Insurance Unlimited*, 141 M 456, 378 P 2d 662.

References

Frank J. Trunk & Son v. DeHaan, 143 M 442, 391 P 2d 353 (concurring opinion).

45-502. (8340) How lien perfected.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Effect of Failure to File Lien within Ninety Days after Material Is Furnished—Subsequent Contract

Where no privity of contract existed between subcontractor and the owners of the improved building and subcontractor did not comply with the ninety-day limitation for filing lien, such subcontractor lost all right to sue owner who had paid prime contractor for work done, and subcontractor was also barred from adding on time period of a subsequent contract with owners for purposes of filing its mechanic's lien. *Frank J. Trunk & Son v. DeHaan*, 143 M 442, 391 P 2d 353.

Effect of Overstatement of Amount

Where there were indications that contractor had "padded the bill" for nearly \$4000 but no proof that he had done so with intent to defraud, he did not lose his right to a mechanic's lien but the trial court should require an accounting. *Hammond v. Knievel*, 141 M 433, 378 P 2d 388.

Question of Continuous Open Account One of Fact

The question of whether a continuous open account existed some fifteen months after completion of the contracted construction work was one of fact and the finding by the trial court would not be disturbed on appeal when supported by evidence. *Hammond v. Knievel*, 141 M 433, 378 P 2d 388.

45-504. (8342) What property affected.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*,

111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

45-505. (8343) Leasehold interest—how affected.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*,

111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

CHAPTER 7—CROP LIENS FOR SEED, GRAIN AND HAIL INSURANCE

Section 45-704. Acknowledgment of satisfaction of lien.

45-707. Satisfaction of lien.

45-704. (8362) Acknowledgment of satisfaction of lien. Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action. [Effective January 1, 1965.]

History: En. Sec. 4, Ch. 15, Ex. L. 1918; re-en. Sec. 8362, R. C. M. 1921; amd. Sec. 11-123, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "ac-

knowledge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

45-707. (8365) Satisfaction of lien. Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the then current year, it is the duty of the lienor to acknowledge satisfaction thereof within twenty days after receiving payment, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before the first day of March of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 223, L. 1921; re-en. Sec. 8365, R. C. M. 1921; amd. Sec. 11-124, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first part of the first sentence.

CHAPTER 8—THRESHERMEN'S LIENS

Section 45-809. Acknowledgment of satisfaction of lien—penalty.

45-809. (8374) Acknowledgment of satisfaction of lien—penalty. Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 9, Ch. 25, L. 1915; re-en. Sec. 8374, R. C. M. 1921; amd. Sec. 11-125, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowl-

edge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

CHAPTER 9—FARM LABORERS' LIENS

Section 45-911. Acknowledgment of satisfaction of lien—penalty.

45-911. (8374.11) Acknowledgment of satisfaction of lien—penalty. Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such crops, he is liable to any person injured thereby in the amount of such injury and costs of action. [Effective January 1, 1965.]

History: En. Sec. 11, Ch. 196, L. 1935; amd. Sec. 11-126, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "ac-

knowledge satisfaction thereof" in the first part of the section; inserted "within thirty (30) days after being requested to do so by a person having a property interest in

such crops" in the latter part of the section; and made a minor change in punctuation.

CHAPTER 10—LABORERS' AND MATERIALMEN'S LIENS ON OIL AND GAS WELLS AND PIPELINES

Section 45-1003. Manner of enforcing liens—duty of county clerks.

45-1003. (8377) Manner of enforcing liens—duty of county clerks. The liens herein created shall arise, be perfected, have the same priority and be enforced in the same manner and the duty of county clerks with respect to the filing and abstracting of liens shall be the same as now provided by the laws of Montana for materialmen's and mechanic's liens, with the following exceptions:

(1) The statement of lien shall be filed with the county clerk of the county in which any part of such land, leasehold, or pipeline is situated.

(2) Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under the contract.

History: En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R. C. M. 1921; amd. Sec. 2, Ch. 152, L. 1923; amd. Sec. 3, Ch. 143, L. 1957; amd. Sec. 1, Ch. 193, L. 1963.

and added, at the end of the section, the words "with the following exceptions" and the numbered paragraphs.

Amendment

The 1963 amendment inserted the words "arise, be perfected, have the same priority and" near the beginning of the section;

Repealing Clause

Section 2 of Ch. 193, Laws 1963 read "Sections 45-1004, 45-1005 and 45-1006, R. C. M. 1947, are hereby repealed."

45-1004 to 45-1006. Repealed.

Repeal

These sections (Secs. 4 to 6, Ch. 143, L. 1957), relating to the perfection and pri-

ority of oil and gas well and pipeline liens, were repealed by Sec. 2, Ch. 193, Laws 1963.

CHAPTER 11—MISCELLANEOUS LIENS

Section 45-1106. Agisters' liens and liens for service—priority.

45-1107. Secured party may take possession of property.

45-1104. (8381) Repealed.

Repeal

This section (Sec. 3933, Civ. C. 1895), relating to liens of sellers of personal

property, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-1106. (8383) Agisters' liens and liens for service—priority. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safe-keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith. A ranchman, farmer, agister, herder, hotel-keeper, livery, boarding, or feed stable-keeper, to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted, and there is a contract, express or implied, for their keeping, feeding, herding, pasturing, or ranching,

has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the same, and is authorized to retain possession thereof until the sum due is paid. The lien hereby created shall not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions, or other recorded liens on the property involved, unless within ten days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lien holder, stating his intention to assert a lien on said property, under the terms of this act, and stating the nature and approximate amount of the work, or feed, performed or furnished or intended to be performed or furnished therefor.

Such service may be made either by personal service or by mailing by registered mail a copy of said notice to the secured party or other lien holder at his last known post-office address. Said service shall be deemed complete upon the deposit of the notice in the post office. [Effective January 1, 1965.]

History: Similar early acts were Sec. 1, p. 331, Bannack Stat.; re-en. Sec. 29, p. 514, Cod. Stat. 1871; re-en. Sec. 848, 5th Div. Rev. Stat. 1879; re-en. Sec. 1394, 5th Div. Comp. Stat. 1887; amd. Sec. 3935, Civ. C. 1895.

En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R. C. M. 1921; amd. Sec. 11-127, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3051. First paragraph based on Field Civ. C. Sec. 1696.

Amendment

The 1963 amendment substituted

45-1107. (8384) Secured party may take possession of property. Within ten days after the date of such mailing, or five days after such personal service, the secured party or other lien holder, or his representative, shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such secured party or other lien holder so to do shall constitute a waiver of the priority of such security interest or other lien over the lien created by this act. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 117, L. 1921; re-en. Sec. 8384, R. C. M. 1921; amd. Sec. 11-128, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3052.

Amendment

The 1963 amendment substituted "se-

"perfected security interests under the Uniform Commercial Code — Secured Transactions" in the first part of the third sentence in the first paragraph for "the lien of prior chattel mortgages"; and substituted "secured party" for "mortgagee" in the third sentence in the first paragraph and in the first sentence in the second paragraph.

Other Recorded Liens

The term "other recorded liens" includes conditional sales contracts. *Williamson v. Skerritt*, 141 M 422, 378 P 2d 215.

cured party" for "mortgagee" in two places; substituted "security interest" for "chattel mortgage" in the second sentence; and added "over the lien created by this act" at the end of the section.

CHAPTER 13—STOPPAGE IN TRANSIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

45-1301 to 45-1305. (8396 to 8400) Repealed.

Repeal

These sections (Secs. 3970 to 3974, Civ. C. 1895; Secs. 5837 to 5841, Rev. C. 1907; Secs. 8396 to 8400, R. C. M. 1921), relating

to stoppage in transit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 14—CROP OR GRAIN LIEN FOR DUSTING OR SPRAYING

Section 45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure.

45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure. Whenever the indebtedness which is a lien upon any such grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 10, Ch. 205, L. 1953; amd. Sec. 11-129, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowledge

satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops" in the latter part of the section.

TITLE 46—LIVESTOCK

- Chapter 1. Livestock industry—regulation by livestock commission, 46-105.
6. Brands—recording—venting—livestock mortgages, 46-609.
 7. Inspectors and detectives, 46-704, 46-707.
 8. Inspection of livestock before removal from county, 46-803, 46-804, 46-806, 46-809 to 46-813.
 9. Livestock markets—inspection and quarantine—license and bonding, 46-904, 46-911.
 10. Estrays—disposal of, 46-1005, 46-1006.
 11. Hides of slaughtered cattle—regulation—hide dealers' licenses, 46-1107.
 14. Legal fences—liability of owners for trespassing stock, 46-1411, 46-1413.
 19. Bounties for killing wild animals—killing dogs injuring livestock, 46-1901, 46-1903, 46-1904, 46-1912, 46-1914, 46-1915.
 21. Sheep—protection from predatory animals—tax, 46-2102, 46-2104.
 23. Grass conservation—grazing districts, 46-2306, 46-2331.
 28. Cattle protective districts, 46-2801 to 46-2810.

CHAPTER 1—LIVESTOCK INDUSTRY—REGULATION BY LIVESTOCK COMMISSION

Section 46-105. Audit of bills—payment of expenses.

46-104. (3256) Duties and powers of commission.

Livestock Markets

In the regulation of livestock markets under section 46-907 the livestock commission has the power to determine whether or not a showing of convenience

and necessity has been made. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-105. (3257) Audit of bills—payment of expenses. It shall be the duty of the livestock commission to audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the livestock commission moneys in the earmarked revenue fund.

History: En. Sec. 5, Ch. 51, L. 1917; re-en. Sec. 3257, R. C. M. 1921; amd. Sec. 88, Ch. 147, L. 1963.

titled thereto for the amount so certified, which warrants shall be drawn upon and paid out of the livestock commission fund, which said fund shall be created by placing to its credit the amounts heretofore directed to be placed to the credit of the sheep inspection and indemnity fund and the stock inspection and detective fund by section 84-5212, and other funds hereafter appropriated for the support and maintenance of the said commission."

Amendment

The 1963 amendment substituted "which shall be paid out of the livestock commission moneys in the earmarked revenue fund" at the end of the section for "and when found correct, to certify the same to the state auditor, who shall thereupon draw a warrant upon the state treasurer in favor of the party or parties en-

CHAPTER 2—LIVESTOCK SANITARY BOARD AND STATE VETERINARY SURGEON—QUARANTINE—INSPECTION AND DESTRUCTION OF DISEASED STOCK—LICENSING DAIRIES, MILK PLANTS AND SLAUGHTERHOUSES

46-241. (3291) Repealed.

Repeal

This section (Sec. 32, Ch. 262, L. 1921), relating to the livestock sanitary board

account, was repealed by Sec. 242, Ch. 147, Laws 1963.

CHAPTER 6—BRANDS—RECORDING—VENTING—
LIVESTOCK MORTGAGES

Section 46-609. Fees for recorder of marks and brands.

46-609. (3307) Fees for recorder of marks and brands. The general recorder of marks and brands shall charge and collect for recording each mark or brand the sum of eight dollars (\$8.00), and for re-recording each mark or brand the sum of four dollars (\$4.00), and for a certified copy of any such record and each duplicate certificate one dollar (\$1.00), and all fees so collected shall be paid into the earmarked revenue fund for the use of the livestock commission; providing, however, that not more than ten per cent (10%) of the net re-recording fees after all expenses of re-recording are paid, shall be expended in any one year except in case of an emergency declared by the governor.

History: En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1929; amd. Sec. 1, Ch. 109, L. 1949; amd. Sec. 1, Ch. 65, L. 1959; amd. Sec. 90, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

CHAPTER 7—INSPECTORS AND DETECTIVES

Section 46-704. Compensation.

46-707. Compensation for animals killed.

46-702. (3310) Repealed.

Repeal

This section (Sec. 2971, Pol. C. 1895), relating to bonds and oaths of stock in-

spectors and detectives, was repealed by Sec. 51, Ch. 177, Laws 1965.

46-704. (3312) Compensation. The stock inspectors and detectives are under the exclusive control and direction of the commission, and must be paid for their services such sums as may be agreed upon by the commission, but in no case must they receive any mileage.

History: En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907; re-en. Sec. 3312, R. C. M. 1921; amd. Sec. 91, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "commission" for "board" in two places.

46-707. (3315) Compensation for animals killed. The value of the animal so taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized, and the tender of the valuation so made to the owner shall be full compensation on account of the loss of said animal. All sums of money disbursed as herein provided shall be paid out of the livestock commission moneys in the earmarked revenue fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into said fund.

History: En. Sec. 2975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907; re-en. Sec. 3315, R. C. M. 1921; amd. Sec. 92, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "livestock commission moneys in the earmarked revenue fund" in the second sentence for "livestock commission fund."

CHAPTER 8—INSPECTION OF LIVESTOCK BEFORE REMOVAL
FROM COUNTY

- Section 46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds.
 46-804. Fees for inspection and livestock transportation permit.
 46-806. Penalties for violations of act.
 46-809. Order requiring sheep removal permits—petition by sheep raisers.
 46-810. Permit required for removal of sheep after order—violation as misdemeanor.
 46-811. Form and issuance of permits—fee.
 46-812. Publication of notice of sheep removal permit order.
 46-813. Removal of permit requirement.

46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds. All state stock inspectors inspecting any livestock, either before or after shipment or removal from any county in this state, shall, in addition to the powers granted them by law, possess the further authority to inspect and seize either at the point of shipment or destination or en route any livestock, or proceeds thereof, which said inspector may have good reason to believe is stolen, or upon which brands have been altered or obliterated, or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection issued before shipment or removal of such livestock.

Upon taking possession of any such livestock in the exercise of the authority granted by this act, the state stock inspector may retain same in his possession for not to exceed fifteen (15) days for the purpose of making further investigation relative to its ownership, or may either at once or at any time within said period of fifteen (15) days sell said livestock at any licensed livestock market, or in the open market, for the best available price and remit the proceeds, less the cost of keeping and sale, to the livestock commission together with a full description of the animal sold, giving marks and brand, if any, and a statement of the reason for the seizure and sale thereof. Said proceeds shall be deposited by the livestock commission with the state treasurer and credited to the agency fund, where it shall be subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock.

History. En. Sec. 3, Ch. 59, L. 1943;
 amd. Sec. 108, Ch. 147, L. 1963.

"agency fund" for "stock estray fund" in the last sentence of the second paragraph; and substituted "for moneys arising from the sale of stray stock" for "against said fund" at the end of the section.

Amendment

The 1963 amendment substituted

46-804. Fees for inspection and livestock transportation permit. (a) For the service of inspection herein provided for before removal from county, the inspector making such inspections shall receive twenty-five cents (25¢) per head for twelve (12) head or less, or three dollars (\$3.00) for from twelve (12) head to thirty (30) head and shall receive ten cents (10¢) per head for each animal over thirty (30) head; for the issuance of a market consignment permit or transportation permit herein provided for before removal from county, the inspector, sheriff or deputy sheriff issuing such permits shall receive twenty-five cents (25¢) for each permit issued for twelve (12) head or less; fifty cents (50¢) for each permit for

twelve (12) to thirty (30) head and one dollar (\$1.00) for each permit issued for over thirty (30) head and shall receive in addition thereto his necessary actual expenses, to be paid by the owner thereof or the person for whom the inspection is made or permit issued. All such inspection and permit fees and expenses shall be collected by the inspector, sheriff or deputy sheriff making the same at the time of inspection or issuance of permit and all such fees and expenses collected by a deputy state stock inspector, sheriff or deputy sheriff shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(b) For the service of inspection herein provided for before any such animal is sold or offered for sale at any licensed public market, the state stock inspector making such inspection shall receive (1) twenty cents (20¢) per head for any such animal originating within the county in the state in which such market is maintained, or transported under a market consignment permit, and (2) ten cents (10¢) per head for any such animal previously inspected before removal from county as herein provided. All such fees to be paid by the owner thereof or by the person for whom the inspection is made. For inspecting any such animal before same is removed from the premises of such licensed public market the state stock inspector making such inspection shall receive ten cents (10¢) per head from the owner thereof or the person for whom the inspection is made. All such fees for inspection at such market shall be collected by the state stock inspector making the inspection at the time such inspection is made and shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(c) A question or doubt having arisen as to the intention of the legislature and policy of the state concerning the disposition of inspection fees and expenses collected by the state stock inspectors of the state of Montana for the inspection of livestock, it is hereby declared to be the policy of this state and the intent of the said twenty-eighth legislative assembly of the state of Montana that all such inspection fees and expenses be paid to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission, and that said state stock inspectors shall be paid for their services and receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners.

History: En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957; amd. Sec. 93, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subds. (a), (b) and (c), substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

46-806. Penalties for violations of act. (a) to (e). * * * [Same as parent volume.]

(f) Upon conviction of any person, firm, association, or corporation under this act, they shall be fined in a sum of not less than fifty dollars

(\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned in the county jail for a period of not more than six (6) months, or shall be punished by both such fine and imprisonment. Of all fines assessed and collected under the provisions of this act, fifty per cent (50%) thereof shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the livestock commission, and fifty per cent (50%) thereof shall be paid into the general fund of the county in which the conviction occurred.

History: En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957; amd. Sec. 94, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subd. (f), substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

46-809. Order requiring sheep removal permits—petition by sheep raisers. The livestock commission shall, within sixty (60) days of the filing of a petition signed by not less than fifty-one per cent (51%) of the sheep raisers owning not less than fifty-one per cent (51%) of the sheep in any county of the state requesting such action, make an order requiring a permit for the removal of any sheep from such county.

History: En. Sec. 1, Ch. 135, L. 1963.

Title of Act

An act to authorize the Montana livestock commission, upon petition of fifty-one per cent (51%) of the sheep raisers owning fifty-one per cent (51%) of the sheep in any county of the state, to re-

quire a permit for the removal of sheep from such county; providing for the form and issuance of such permits; providing that it shall be a misdemeanor to remove sheep from such a county without a permit; and providing for the manner of removing the requirement for such a permit.

46-810. Permit required for removal of sheep after order—violation as misdemeanor. From and after the date of any order of the livestock commission requiring a permit for the removal of sheep from any county, it shall be unlawful for any person to remove sheep from such county without a permit, and any person removing, authorizing or assisting in the removal of sheep from such county without a permit shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 135, L. 1963.

46-811. Form and issuance of permits—fee. Before making any order under this act, the livestock commission must provide for the form of the permit and for issuance of such permits by livestock inspectors in the affected county. Fee for issuance of such permit shall be fifty cents (50¢).

History: En. Sec. 3, Ch. 135, L. 1963.

46-812. Publication of notice of sheep removal permit order. Before the effective date of any order made under this act, the commission must publish a notice containing the text and effective date of the order at least three (3) times in a paper of general circulation in the county and must cause a copy of the order to be mailed to every sheep raiser in the county.

History: En. Sec. 4, Ch. 135, L. 1963.

46-813. Removal of permit requirement. Upon receipt of a petition signed in the same manner as that specified in section 1 [46-809] of this act, requesting the removal of the permit requirement, the livestock

commission shall, at its next meeting, make an order removing the permit requirement.

History: En. Sec. 5, Ch. 135, L. 1963.

CHAPTER 9—LIVESTOCK MARKETS—INSPECTION AND QUARANTINE —LICENSE AND BONDING

Section 46-904. State treasurer to hold proceeds of sales of stray stock.

46-911. License fee.

46-901. (3328) Public markets—record books of sales of livestock.

References

Application of Baker Sales Barn, Inc.,
140 M 1, 367 P 2d 775, 778.

46-904. (3331) State treasurer to hold proceeds of sales of stray stock. When the provisions of this law shall have been fully complied with, and the money paid into the state treasury, two years after its receipt from the state livestock commission, the state treasurer shall be required to hold such money in the agency fund and his books shall show all information with respect to the sale and proceeds from each animal, in accordance with the published yearly report of the livestock commission, and such money shall be held by the state treasurer for the use and benefit of the rightful owner and claimant of such money for the period of one year, after which it shall become state property and be placed to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 4, Ch. 96, L. 1907; Sec. 1818, Rev. C. 1907; re-en. Sec. 3331, R. C. M. 1921; amd. Sec. 106, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the

agency fund" for "a separate fund, to be known and designated as the 'stray stock fund'"; and substituted "earmarked revenue fund for the use of the livestock commission" for "livestock commission fund" at the end of the section.

46-907. Regulation of livestock markets.

Powers of Livestock Commission

The discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for

certificate to operate a livestock market is limited by section 46-909. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-908. Certificate to operate livestock market required, etc.

Governmental Licensing

Livestock markets are proper subjects for governmental licensing on the basis of convenience and necessity. Application of

Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 779. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-909. Hearing and procedure—limitation upon issuance of certificates.

Discretionary Power of Commission

This section limits the discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for certificate to operate a livestock market. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

Sufficiency of Evidence

In a proceeding to obtain a certificate of public convenience and necessity for operation of a livestock market, evidence may be introduced pertaining to markets outside of Montana but it has effect only so far as the effects on existing markets in the state are concerned. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 782. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

Refusal of certificate of public convenience and necessity for operation of a livestock market was justified where evidence of the applicants showed only convenience as to distances, desirability

for community and a border-line market economically. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-911. License fee. Every person operating a livestock market in this state shall be required to pay on May 1st, annually, a license fee of one hundred dollars (\$100.00) to the livestock commission. All fees provided for under this act shall be paid into the state treasury, and shall be placed by the state treasurer to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 6, Ch. 193, L. 1945; amd. Sec. 95, Ch. 147, L. 1963.

earmarked revenue fund for use of the livestock commission" for "the livestock commission fund" at the end of the section.

Amendment

The 1963 amendment substituted "the

46-917. Appeal by licensee or applicant for certificate, etc.

Review by District Court

On review provided in the district court under this section it is the duty of the court to examine the records made before the livestock commission to determine whether the commission acted "capri-

ciously, arbitrarily, or abused its discretion and whether it acted according to law." Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

CHAPTER 10—ESTRAYS—DISPOSAL OF

Section 46-1005. "Estray," as herein used, defined.

46-1006. Publication of description of estrays sold—disposition of proceeds remaining in state treasury.

46-1005. (3337) "Estray," as herein used, defined. An estray within the meaning of this act shall be any horse, mule, mare, gelding, colt, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb, not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district wherein such animal may be found, by inquiry among reputable resident stock owners or freeholders therein; or any of such animals bearing a recorded brand but the owner of which brand cannot be located at or through the post office designated upon the records of the recorder of marks and brands, or which owner cannot be located by the stock inspector of the district where such estray is found by inquiry among reputable resident stock owners or freeholders therein; or any of the animals above enumerated which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district wherein said animal is found, by inquiry among reputable resident stock owners or freeholders therein.

History: En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1959; amd. Sec. 1, Ch. 37, L. 1963.

Repealing Clause

Section 2 of Ch. 37, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment extended the section to include sheep and lambs.

46-1006. (3338) Publication of description of estrays sold—disposition of proceeds remaining in state treasury. A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two (2) consecutive weekly or semimonthly or monthly issues next after May first of each year in not more than four (4) weekly or semimonthly or monthly publications in the state of Montana, said publications to be designated by the state livestock commission, and when such publication shall have been made and the proceeds from the sale of such animals shall have remained in the hands of the state treasurer for a period of two (2) years, it shall be, by the treasurer, upon request of the state livestock commission, at once placed to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919; re-en. Sec. 3338, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1927; amd. Sec. 1, Ch. 95, L. 1941; amd. Sec. 107, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund for the use of the livestock commission" for "state livestock commission fund" at the end of the section.

CHAPTER 11—HIDES OF SLAUGHTERED CATTLE—REGULATION—HIDE DEALERS' LICENSES

Section 46-1107. Hide dealer or buyers license fee—disposition of proceeds.

46-1107. (3350.8) Hide dealer or buyers license fee—disposition of proceeds. Every hide dealer or buyer shall pay to the livestock commission a license fee of five dollars (\$5.00) for each established place of business at which such hide dealer or buyer purchases or deals in hides, before engaging in, or conducting any business as such in the state of Montana, which license shall continue in force and effect for that calendar year. The moneys collected from such licenses shall be placed in the earmarked revenue fund, livestock commission account. The license must be renewed January 1 of each year commencing January 1, 1961.

History: En. Sec. 2, Ch. 151, L. 1929; amd. Sec. 2, Ch. 177, L. 1939; amd. Sec. 5, Ch. 44, L. 1961; amd. Sec. 4, Ch. 248, L. 1965.

Amendment

The 1965 amendment substituted "earmarked revenue fund, livestock commission account" for "livestock commission fund" at the end of the second sentence.

CHAPTER 14—LEGAL FENCES—LIABILITY OF OWNERS FOR TRESPASSING STOCK

Section 46-1411. Marking land and mining claims in national forest.

46-1413. Marking—right of action against trespassing stock.

46-1411. (3380) Marking land and mining claims in national forest. It shall be the duty of the owner, or the person holding possessory right, to all unfenced lands, or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana, or lying on public ranges adjoining to any national forest reserve, to mark the boundaries

thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921;
re-en. Sec. 3380, R. C. M. 1921; amd. Sec.
1, Ch. 31, L. 1963.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" in two places.

46-1413. (3382) Marking—right of action against trespassing stock. No person owning or possessing agricultural or grazing land, or patented or unpatented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of sheep, cattle or other livestock under the charge of a herder, for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said livestock so trespassing strayed thereon on their own inclination and without being driven, or whether said livestock were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to; but in no event shall damages other than nominal damages be assessed against said trespass, unless the landowner or his duly authorized agent shall within six months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

History: En. Sec. 3, Ch. 222, L. 1921;
re-en. Sec. 3382, R. C. M. 1921; amd. Sec.
1, Ch. 78, L. 1927; amd. Sec. 2, Ch. 31,
L. 1963.

Repealing Clause

Section 3 of Ch. 31, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" near the beginning of the section; and substituted "livestock" for "sheep" before "so trespassing" and before "were herded or driven."

Effective Date

Section 4 of Ch. 31, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 2, 1963.

**CHAPTER 19—BOUNTIES FOR KILLING WILD ANIMALS—
KILLING DOGS INJURING LIVESTOCK**

- Section 46-1901. Five per cent of county license money to be used for payment of bounty claims.
- 46-1903. Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys.
- 46-1904. Disposal of proceeds from sale of skins, hides and specimens—presenting to museums.
- 46-1912. Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums.
- 46-1914. Levy of tax for purpose of paying for destruction of wild animals—limitation on levy.
- 46-1915. Penalty for fraudulent claims.

46-1901. (3414) Five per cent of county license money to be used for payment of bounty claims. For the purpose of providing for the pay-

ment of bounty claims five per cent of all license money collected by the several county treasurers of the state shall be paid over by said county treasurers to the state treasurer and shall by the latter be deposited in the earmarked revenue fund.

History: En. Sec. 3075, Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921; re-en. Sec. 3414, R. C. M. 1921; amd. Sec. 97, Ch. 147, L. 1963.

hereby created a fund to be known as the state bounty fund which shall consist of" before "five per cent"; deleted "and said moneys" before "shall be paid over"; and substituted "the earmarked revenue fund" at the end of the section for "the state bounty fund."

Amendment

The 1963 amendment deleted "there is

46-1903. (3417.2) Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys. (a) and (b). * * * [Same as parent volume.]

(c) Subject to the constitutional authority of the state board of examiners, the Montana livestock commission shall administer and expend for predatory animal extermination and control, in production of livestock and poultry in the state of Montana all the moneys that are or may be made available to it, including the moneys from the levy under section 9 of article XII of the Constitution of Montana and section 84-5214, enacted pursuant to such provision of the constitution, and all such moneys as are made available to said commission by appropriations made by the legislative assembly for predatory animal control by said commission. The commission shall expend said funds for predatory animal control by all effective means, including employment of hunters, trappers and other personnel, procurement of traps, poisons, equipment and supplies, and, also, for the payment of bounties within the sound discretion of the commission, as advised by the advisory agencies aforesaid, and responsive to the necessities of control in various areas of the state. The commission shall not consider or approve any claims against funds available to it, in excess of the amounts available in any biennium, and no warrants shall be issued or registered for any such claims whether for bounties or for any other purposes.

(d). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 73, L. 1923; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963.

and it" which followed "Montana livestock commission" and deleted the words "in said fund" which followed the words "moneys that are or may be made available to it"; and in the last sentence of subsection (c) deleted the words "said state bounty fund, or against additional" which followed the words "claims against."

Amendment

The 1963 amendment in the first sentence of subsection (c) deleted "shall have, and it is hereby invested with control and supervision of the state bounty fund,

46-1904. (3417.3) Disposal of proceeds from sale of skins, hides and specimens—presenting to museums. All furs, skins and specimens, taken by hunters or trappers, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the earmarked revenue fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charges to any state museum or institution.

History: En. Sec. 3, Ch. 73, L. 1923; amd. Sec. 99, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "whose

salaries may be paid in whole or in part out of the fund herein created" which followed "hunters or trappers"; and substituted "earmarked revenue fund" for "bounty fund."

46-1912. (3417.11) Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums. If, at the end of any bounty paying season, there shall be a surplus of moneys available for the administration of Chapter 19, Title 46, R.C.M. 1947, such surplus may be used to hire salaried hunters and trappers to hunt and trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

All furs, skins and specimens, taken by hunters or trappers, whose salaries may be paid in whole or in part out of such moneys, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the earmarked revenue fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charge to any state museum or institution.

History: En. Sec. 8, Ch. 109, L. 1925; amd. Sec. 100, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "of moneys available for the administration of

Chapter 19, Title 46, R.C.M. 1947" for "in the state bounty fund" in the first paragraph; and in the second paragraph substituted "such moneys" for "the fund herein created" and "earmarked revenue fund" for "bounty fund."

46-1914. (3417.13) Levy of tax for purpose of paying for destruction of wild animals—limitation on levy. The department of state whose duty it is to fix tax levies, shall annually prescribe the levy recommended by the livestock commission to be made against livestock of all classes, for the purpose of paying for the destruction of wild animals killed within the state, which tax in any one year shall not exceed one and one-half ($1\frac{1}{2}$) mills on a dollar upon the assessed valuation of such livestock, and such moneys so received shall be used and applied only to the payment of claims for the destruction of wild animals and to the administration of the provisions of this act, approved by the livestock commission, and the moneys received for the taxes so levied shall be transmitted annually with other taxes for state purposes to the state treasurer by the county treasurer of each county, and when received by the state treasurer shall be placed to the credit of the earmarked revenue fund, and such moneys shall thereafter be paid out on claims approved as aforesaid, in accordance with the law governing the payment of claims.

History: En. Sec. 10, Ch. 109, L. 1925; amd. Sec. 24, Ch. 97, L. 1961; amd. Sec. 101, Ch. 147, L. 1963.

Amendment

The 1963 amendment omitted a former first sentence which read: "There is hereby created a fund, to be known as

the 'bounty fund'"; deleted "The tax commission, or" at the beginning of the present text; substituted "earmarked revenue fund" for "bounty fund" near the end of the section; and deleted "and all moneys in said fund are hereby appropriated for such purposes" at the end of the section.

46-1915. (3417.14) Penalty for fraudulent claims. Any person or persons who shall patch up any skin or scalp, or who shall present any

punched or patched skin or scalp, or who shall bring in any skin or skins from other states or territory, with the intent to obtain the bounty on the same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins and examining the same to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, and that two-thirds of the fine, if the same be collected, or can be collected, shall be given to the informer, and the balance be deposited in the earmarked revenue fund and used for the administration of this act.

History: En. Sec. 11, Ch. 109, L. 1925;
amd. Sec. 102, Ch. 147, L. 1963.

posited in the earmarked revenue fund and used for the administration of this act" for "converted into the state bounty fund" at the end of the section.

Amendment

The 1963 amendment substituted "de-

CHAPTER 20—IMPOUNDING LIVESTOCK OR DOMESTIC ANIMALS

46-2001. (5175) Impounding animals—duties of cities and towns.

Cross-Reference

road construction areas, secs. 32-319 to 32-321.

Livestock running at large in emergency

CHAPTER 21—SHEEP—PROTECTION FROM PREDATORY ANIMALS—TAX

Section 46-2102. County commissioners may require per capita license fee on sheep.
46-2104. Duty of county commissioners—petition of sheep owners.

46-2102. County commissioners may require per capita license fee on sheep. To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners or persons in possession of any sheep, coming one year old or over, in the county on the regular assessment date of each year to pay a license fee of not exceeding fifteen cents (15¢) per head of sheep so owned or possessed by him in the county; provided that all owners or persons in possession of any sheep, coming one year old or over, coming into the county after the regular assessment date and subject to taxation under the provisions of section 84-6008 shall also be subject to payment of the license fee herein prescribed. Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor. Said license fees shall be payable to and collected by the county treasurer, and when so levied, shall be a lien upon the property, both real and personal of the licensee. In case the person against whom said license fee is levied owns no real estate against which said license fee is or may become a lien, then said license fee shall be payable im-

mediately upon its levy and the treasurer shall collect the same in the manner provided by law for the collection of personal property taxes which are not a lien upon real estate. When collected, said fees shall be placed by the treasurer in the predatory animal control fund and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only. The word "owners" or "persons" shall include natural persons, copartnerships, corporations, trusts and estates.

History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965.

Amendment

The 1965 amendment increased the maximum license fee specified in the first sentence from ten to fifteen cents per head.

46-2104. Duty of county commissioners—petition of sheep owners. In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least fifty-one per cent (51 %) of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program, and cause said licenses to be secured and issued and the fees collected for the following year in such amount, not exceeding the limits of fifteen cents (15¢) per head of sheep as shown by said assessment rolls, as will defray the cost of administering the program so established. The license fee determined and set by the board, within said limits, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least fifty-one per cent (51 %) of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied. If the resident owners of at least fifty-one per cent (51 %) of the sheep in the county either (a) petition for an increase in the license fee, subject always to the maximum limitation of fifteen cents (15¢) per head of sheep, or (b) petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year.

History: En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949; amd. Sec. 2, Ch. 87, L. 1957; amd. Sec. 2, Ch. 87, L. 1965.

Amendment

The 1965 amendment increased the maximum license fee specified near the end of the second sentence and in clause (a) of the final sentence from ten to fifteen cents per head.

CHAPTER 23—GRASS CONSERVATION—GRAZING DISTRICTS

Section 46-2306. Compensation of members—auditing and payment of claims.
 46-2331. Fees may be imposed by commission against districts.

46-2306. Compensation of members—auditing and payment of claims.
 The members of the commission shall receive no compensation for their services other than the actual amount of traveling expenses actually incurred in respect to the performance of their official duties in attendance at regular or special meetings of the board and ten dollars (\$10.00) per diem for each day actually in attendance at such board meetings. The per diem of each member of the board shall be limited to not exceed the amount of five hundred dollars (\$500.00) per year, such per diem and expenses to be audited, allowed and paid as herein provided.

The commission shall audit all claims, accounts or bills for expenses, per diem, or expenditures incurred by it or its employees. If the commission approves them they shall be processed as provided by law and paid from the moneys of the Montana grass conservation commission in the earmarked revenue fund; provided that the board may by resolution authorize the secretary to audit and certify all expenses, salaries, and expense accounts of the commission, or its employees, and such audit shall be made a part of the commissioner's report to the governor, a copy of which shall be sent to all state districts coming under the provisions of this act.

History: En. Sec. 6, Ch. 208, L. 1939; amd. Sec. 1, Ch. 61, L. 1945; amd. Sec. 25, Ch. 97, L. 1961; amd. Sec. 155, Ch. 147, L. 1963.

"moneys of the Montana grass conservation commission in the earmarked revenue fund" for "state grass conservation fund" in the second sentence of the second paragraph.

Amendment

The 1963 amendment substituted

46-2330. Repealed.**Repeal**

This section (Sec. 28, Ch. 208, L. 1939), relating to the state grass conservation

fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

46-2331. Fees may be imposed by commission against districts. The state grass conservation commission shall have authority and right to impose such fees against the several state grazing districts of the state of Montana and in an amount not in excess of ten cents (10¢) per animal unit based upon the number of animal units per year for which the district grants permits, to defray any or all expenses created by the state grass conservation commission, and said state grass conservation commission shall from such fees and collections pay one per cent (1%) of said fees and collections to the state treasurer to be placed in the general fund, and shall repay to the state treasurer of Montana any and all appropriations provided by the state of Montana for the establishment of this commission and the administration of this act when so collected. When such appropriation by the state of Montana is repaid, the balance of such funds shall be held in the earmarked revenue fund, to be expended by order and direction of the state grass conservation commission for the further administration of the commission, and thereafter said com-

mission shall be maintained by funds obtained from the livestock fees hereinbefore provided. If any state district fails or refuses to pay such fee or fees on or before the first day of May of each year, and after such district shall have been provided with a full report from the commission of all moneys collected and expended by it for its fiscal year next preceding that date, the commission shall have authority to compel and levy, collection and payment by writ of mandate or other appropriate remedy against said state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund" for "state grass conservation fund, herein created" in the second sentence.

CHAPTER 28—CATTLE PROTECTIVE DISTRICTS

- Section 46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners.
 46-2802. Selection of cattle protective committee members.
 46-2803. Powers and duties of protective committees.
 46-2804. Tax levy—deposit of proceeds.
 46-2805. Removal of area from protective district—discontinuance of district—levy saved.
 46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners.
 46-2807. Selection of cattle protective committee members.
 46-2808. Powers and duties of protective committees.
 46-2809. Tax levy—deposit of proceeds.
 46-2810. Discontinuance of district—levy saved.

46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners. A cattle protective district embracing all or parts of two or more counties may be formed upon the filing of petitions by the cattle growers of such counties with the boards of county commissioners of each county to be wholly or partially included in the district. Such petitions must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of cattle for the protection of which the district is to be formed residing within the area designated as part of the district in each of the counties affected. Upon receipt of such a petition each board of county commissioners must within thirty (30) days declare the designated portion of its county a part of such cattle protective district and the district shall be formed immediately upon the action of the last board of county commissioners to act.

History: En. Sec. 1, Ch. 181, L. 1963.

Title of Act

An act to authorize the creation and operation of cattle protective districts embracing all or portions of two or more

counties, providing for the appointment of district cattle protective committees, providing for the powers, duties and financing of such cattle protective districts.

46-2802. Selection of cattle protective committee members. Each county wholly or partially included in such district shall be entitled to three (3) members of the district cattle protective committee who shall

be chosen in the same manner as members of county cattle protective committees under section 46-2701, R.C.M. 1947.

History: En. Sec. 2, Ch. 181, L. 1963.

46-2803. Powers and duties of protective committees. District cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of Chapter 27, Title 46, R.C.M. 1947.

History: En. Sec. 3, Ch. 181, L. 1963.

46-2804. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 181, L. 1963.

46-2805. Removal of area from protective district—discontinuance of district—levy saved. Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in section 1 [46-2801] of this act, a board of county commissioners may remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district, provided, however, that such action in discontinuing said district or part of district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out.

History: En. Sec. 5, Ch. 181, L. 1963.

46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners. A cattle protective district embracing part of one county in the state of Montana may be formed upon the filing of a petition by cattle growers within said district with the board of county commissioners in said county. Such petition must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of the cattle for the protection of which the district is to be formed residing within the area designated. Upon receipt of such petition, the board of county commissioners must within thirty (30) days declare the designated portion of its county a cattle protective district and the district shall be formed immediately thereafter.

History: En. Sec. 1, Ch. 91, L. 1965. county in the state of Montana and providing for its formation and for its powers

Title of Act and duties, including organization, tax levy, and discontinuance.

An act relating to the formation of a cattle protective district within any

46-2807. Selection of cattle protective committee members. Each cattle protective district shall be entitled to three (3) members, who shall be chosen in the same manner as members of a county cattle protective committee under section 46-2701, R. C. M., 1947.

History: En. Sec. 2, Ch. 91, L. 1965.

46-2808. Powers and duties of protective committees. Such district cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of chapter 27, Title 46, R. C. M., 1947.

History: En. Sec. 3, Ch. 91, L. 1965.

46-2809. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 91, L. 1965.

46-2810. Discontinuance of district—levy saved. Upon receipt of a petition or of petitions signed in the same number and in the same manner as the petition to form the district, as herein provided, the board of county commissioners may discontinue the cattle protective district, provided, however, that such action in discontinuing said district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out.

History: En. Sec. 5, Ch. 91, L. 1965.

TITLE 47—LOANS

Chapter 1. Loans for use or exchange—loan of money, 47-124.

2. Consumer Loan Act, 47-210, 47-214.

CHAPTER 1—LOANS FOR USE OR EXCHANGE—LOAN OF MONEY

Section 47-124. Legal interest.

47-124. (7725) Legal interest. Except as otherwise provided by the Uniform Commercial Code: Unless there is an express contract in writing, fixing a different rate, interest is payable on all moneys at the rate of six per cent (6%) per annum after they become due on any instrument of writing, except a judgment, on an account stated, and on moneys lent or due on any settlement of accounts from the date on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period of less than one (1) year, three hundred and sixty-five (365) days are deemed to constitute a year. [Effective January 1, 1965.]

History: En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1933; amd. Sec. 11-130, Ch. 264, L. 1963. Cal. Civ. C. Sec. 1917.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

47-125. (7726) Same—any rate not exceeding ten per cent, etc.

Retail Installment Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by this section and constituted a special law regulating the rate of interest on money, proscribed by section 26, article V of the constitution, the federal court applied the abstention doctrine and postponed further

action until the issue was determined by the supreme court of Montana. *B-W Acceptance Corp. v. Torgerson*, 234 F Supp 214, 216.

Sale of Assets

Where plaintiffs advanced the money and purchased the assets of a business, and at the same time entered an agreement for future resale of a part of the business to defendant, the entire transaction was a sale and contract of sale, rather than a loan, so that the difference in sale prices was not interest subject to the usury statute. *Favero v. WYNacht*, 140 M 358, 371 P 2d 858, 867.

47-126. (7727) Penalty for usury—action to recover, etc.

References

Favero v. WYNacht, 140 M 358, 371 P 2d 858, 867.

CHAPTER 2—CONSUMER LOAN ACT

Section 47-210. Rates and charges—refunds—past due amounts—excess charges, effect.

47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy.

47-210. Rates and charges—refunds—past due amounts—excess charges, effect. (a) Maximum rate of charge. Every licensee hereunder may contract for and receive, on any loan of money not exceeding one thousand dollars (\$1,000) in principal amount, charges at rates not in excess of twenty dollars (\$20) per year per one hundred dollars (\$100) on that part of the principal amount of the loan not exceeding three hundred dollars (\$300); sixteen dollars (\$16) per year per one hundred dollars (\$100) on that part of the principal amount of the loan exceeding three hundred dollars (\$300) but not exceeding five hundred dollars (\$500), and twelve dollars (\$12) per year per one hundred dollars (\$100) on that part of the principal amount of the loan in excess of five hundred dollars (\$500) but not exceeding one thousand dollars (\$1,000). Said charges shall be computed at the aforesaid rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(b) to (f). * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965.

Amendment

The 1965 amendment substituted "principal amount" for "amount" near the beginning of subsection (a); inserted "of the principal amount" before "of the loan" in three places in the first sentence of sub-

section (a); deleted from the end of the first sentence of subsection (a) the words "when the loan is made for a period of one year, and proportionately at these rates for a greater or lesser amount within said limits or for a greater or lesser period of time"; inserted the second sentence in subsection (a); and made minor changes in phraseology in subsection (a).

47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy. (a) No insurance of any kind shall be written by a licensee, or employee, affiliate or associate of the licensee in connection with any loan except as hereinafter provided.

(b) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(c) Property insurance. When the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure tangible personal property offered as security against any substantial risk of loss, damage or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to

obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(d) Credit life insurance. Subject to the laws of this state, credit life insurance may be provided at the expense of the borrower and may be written by a licensee upon the request of the borrower when the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges. If any loan shall include amounts advanced for insurance premiums and charges such loan shall not in any event exceed one thousand dollars (\$1,000).

(e) The insurance authorized by this section may be sold, obtained or provided by or through a licensee and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker or insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate or associate of the licensee from the sale, provision or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this act.

A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

History: En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965.

Amendment

The 1965 amendment substituted "except as hereinafter provided" at the end of subsection (a) for "where the principal amount thereof is three hundred dollars (\$300) or less, and such amount of three hundred dollars (\$300) shall not include any charge for interest, insurance or any other identifiable charge"; inserted sub-

section (d) and the first paragraph of subsection (e); and substituted "this section" for "this subsection" near the beginning of the second paragraph of subsection (e), formerly the second paragraph of subsection (c).

Effective Date

Section 3 of Ch. 15, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 12, 1965.

TITLE 48—MARRIAGE

- Chapter 1. Marriage defined—how and by whom contracted and authenticated, 48-118.1, 48-142 to 48-151.
2. Annulling marriage, 48-202, 48-203, 48-207.

CHAPTER 1—MARRIAGE DEFINED—HOW AND BY WHOM CONTRACTED AND AUTHENTICATED

- Section 48-118.1. Application for license.
48-142. Legislative intent—public policy.
48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages.
48-144. Application for marriage license—form.
48-145. Advice to license applicants of legislative intent.
48-146. License required for marriage—place of ceremony—county where license issued.
48-147. Applicants under influence of liquor or drug.
48-148. Applicants delinquent in support obligations.
48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—is-suance without objection—waiting period.
48-150. Validity of foreign marriages.
48-151. Waiting period after divorce.

48-101. (5695) What constitutes marriage.

Cross-Reference

Cause of action for breach of promise abolished, sec. 17-1202.

Right of Consortium

The mutual rights which arise in the husband and wife upon marriage, termed contractual or legal rights, include rights which are embraced within the term con-

sortium. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

Under this section and section 36-101 a woman by her marriage obtains a contractual right to consortium. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

48-102. (5696) Repealed.

Repeal

This section (Sec. 51, Civ. C. 1895), relating to the age of consent for marriage,

was repealed by Sec. 12, Ch. 232, Laws 1963.

48-113. (5707) Repealed.

Repeal

This section (Sec. 57, Civ. C. 1895), relating to marriages contracted outside

the state, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-117, 48-118. (5711, 5712) Repealed.

Repeal

These sections (Secs. 72, 73, Civ. C.

1895), relating to marriage licenses, were repealed by Sec. 12, Ch. 232, Laws 1963.

48-118.1. **Application for license.** An application for a marriage license shall be filed at least five (5) days before a license shall be issued; provided, that, upon application of either of the parties to a proposed marriage, any judge of a district court may, upon satisfactory evidence being presented to him that either of the parties to the proposed marriage is dangerously ill, such illness being likely to result in death, or upon the request of the parents or guardian, if any, or upon any other circumstance which, in the opinion of the judge of the district court, warrants

special dispensation may by order authorize the license to be issued at any time before the expiration of the said five (5) days; provided, further that such judge shall, before issuing such order, require that the parties making application for such marriage license shall be examined under oath, and shall give the reasons why such license should not be withheld by the clerk of the district court for the statutory period. Such order shall be delivered to the clerk of the district court issuing the license and by him retained as prima-facie evidence of his authority to issue the said marriage license within the five (5) day period.

History: En. Sec. 1, Ch. 71, L. 1961;
amd. Sec. 10, Ch. 232, L. 1963.

Amendment

The 1963 amendment added the second proviso to the first sentence.

48-118.2. Repealed.

Repeal

This section (Sec. 2, Ch. 71, L. 1961), relating to applications for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-121. (5715) Repealed.

Repeal

This section (Sec. 76, Civ. C. 1895), relating to evidence required for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-142. Legislative intent—public policy. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

History: En. Sec. 1, Ch. 232, L. 1963.

Title of Act

An act relating to marriage; defining legislative intent; defining marriageable age; requiring the delivery of premarital information to applicants; providing for a uniform marriage application form; providing for the issuance of marriage licenses; limiting the issuance of licenses where applicants are under the influence of narcotic drug or alcohol or are failing to support lawful dependents; providing a

procedure for objection to the issuance of marriage licenses; defining the validity and invalidity of marriages performed in other states; amending section 48-118.1, R.C.M., 1947, to provide for testimony under the oath of applicants seeking a waiver of the waiting period between application for and issuance of a marriage license; prohibiting remarriage within six months after divorce; and repealing sections 48-102, 48-113, 48-117, 48-118, 48-118.2 and 48-121, R.C.M., 1947.

48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages. (1) Every male person who has attained the full age of eighteen (18) years or who has obtained the permission of the district judge as provided in subparagraph (3) and every female person who has attained the full age of sixteen (16) years or who has obtained the permission of the district judge

as provided in subparagraph (3) shall be capable in law of contracting marriage if otherwise competent.

(2) If either of the contracting parties is between the ages of eighteen (18) and twenty-one (21) if a male, or between the ages of sixteen (16) and eighteen (18) if a female, no license shall be issued without the consent of his or her parents or guardian, or of the parent having the actual care, custody and control of said party, given before the clerk of the court under oath, or certified under the hands of such parents or guardian as aforesaid attested by two adult witnesses, and properly verified by affidavit (or affirmation) before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of the said clerk of court at the time of application for said license. If there is no guardian or parent having the actual care, custody and control of said party, then the judge of the district court in the county where the application is pending may, after hearing upon proper cause shown, make an order allowing the marriage of said party.

(3) A male under the age of eighteen (18) or a female under the age of sixteen (16) may lawfully contract to marry and obtain a marriage license if there is first procured the consent of the parent or guardian as provided in subparagraph (2) and if the district judge of the county wherein the application is made, after examining the parties under oath, shall decide that it is to the best interest of such applicant and of the established public policy of the state of Montana, and shall authorize the clerk of the court to issue the license in conformance with the other provisions of this act.

History: En. Sec. 2, Ch. 232, L. 1963.

48-144. Application for marriage license—form. The application for a marriage license shall be in form substantially as follows:

THIS IS A SWORN STATEMENT. IF YOU MAKE FALSE STATEMENTS, YOU MAY BE PROSECUTED FOR PERJURY OR FOR FALSE SWEARING.

State of Montana

County of _____

We, the undersigned, in accordance with statements hereinafter contained and the facts set forth herein, which we and each of us do solemnly swear are true and correct to the best of our knowledge and belief, do hereby make application to the _____ of _____ County, Montana, for a license to marry. We further swear that we may lawfully marry and that our application for a marriage license has not been rejected in any county in Montana (except under the circumstances stated below).

Signature of Male applicant _____

Signature of Female applicant _____

A certified copy of a birth certificate or other uncontrovertible evidence of age must be submitted for the examination of each applicant and of the

clerk. A certified copy of each divorce decree, decree of annulment, and other decrees or orders relating to the custody, care or support of dependent children must also be furnished for examination.

From the Male Applicant

Full name _____
 Race or Color _____
 Usual Residence _____
 Street address or R. F. D. No. _____

City or town, county, state, country _____

When did your residence in this county begin? _____

Have there been any interruptions in your residence in this county since that date? _____

Date of birth _____ Age _____
 month day year last birthday

Usual occupation _____

Industry or business _____

Place of birth _____

Religious denomination _____
 (not compulsory)

Full name of FATHER _____

Race or color _____

Residence _____

Occupation _____

Birthplace _____

Full name of MOTHER _____

Race or color _____

Residence _____

Occupation _____

Birthplace _____

Maiden name of MOTHER _____

Male applicant affirms this
 is his _____ marriage.
 number

Previous marriages were ended
 by: _____
 manner date place

Children by prior marriages _____

Are you presently in default
 of a legal obligation to sup-
 port lawful dependent(s)? _____

From the Female Applicant

Full name _____
 Race or Color _____
 Usual Residence _____
 Street address or R. F. D. No. _____

City or town, county, state, country _____

When did your residence in this county begin? _____

Have there been any interruptions in your residence in this county since that date? _____

Date of birth _____ Age _____
 month day year last birthday

Usual occupation _____

Industry or business _____

Place of birth _____

Religious denomination _____
 (not compulsory)

Full name of FATHER _____

Race or color _____

Residence _____

Occupation _____

Birthplace _____

Full name of MOTHER _____

Race or color _____

Residence _____

Occupation _____

Birthplace _____

Maiden name of MOTHER _____

Female applicant affirms this
 is her _____ marriage.
 number

Previous marriages were ended
 by: _____
 manner date place

Children by prior marriages _____

Are you presently in default
 of a legal obligation to sup-
 port lawful dependent(s)? _____

Are you under the influence
of intoxicating liquor or
narcotic drug? _____
Your blood relationship to
other applicant, if any? _____
If prior application rejected
in another county, state
place, reasons and date: _____

Are you under the influence
of intoxicating liquor or
narcotic drug? _____
Your blood relationship to
other applicant, if any? _____
If prior application rejected
in another county, state
place, reasons and date: _____

Sworn and subscribed to before
me this _____ day of _____
_____ A.D., 19____

Signature

Title

Marriage to take place _____
date _____

Future Address

Enter here exact future address
after marriage, if known _____

place (city and county)

street address

Application filed _____
date _____ city or town _____ state _____

License issued _____
date _____

History: En. Sec. 3, Ch. 232, L. 1963.

48-145. Advice to license applicants of legislative intent. At the time of application for such license, the clerk of the district court shall give to each of the applicants (or mail to an applicant who completes his part of the application outside of the state) a card with the statement of legislative intent printed thereon. Such cards shall be procured by the clerk of the district court at the expense of the county and shall be in form substantially as follows:

MARITAL INFORMATION

Your marriage license will be issued to you under the provisions of Title 48 of the Montana statutes. For your information and advice, that title includes the following provision:

INTENT. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impair-

ment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

History: En. Sec. 4, Ch. 232, L. 1963.

48-146. License required for marriage—place of ceremony—county where license issued. No Montana resident shall be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least five (5) days immediately prior to making application therefor.

A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

If both parties be nonresidents of the state, such license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of such persons is a nonresident of the county where such license is to issue, his part of the application may be completed sworn to (or affirmed) before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963.

48-147. Applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: En. Sec. 6, Ch. 232, L. 1963.

48-148. Applicants delinquent in support obligations. No license to marry shall be issued by any clerk of the district court if either of the applicants for a license is or has been failing to support lawful dependents when ordered to do so by a court having jurisdiction, unless a judge of a court of record after hearing shall determine that despite such failure said applicant is financially able to discharge the duty to support existing dependents and those resulting from the contemplated marriage and shall authorize the clerk to issue the license. The judge shall have authority to require that the applicant post sufficient security to insure the performance of the support obligation to existing dependents.

History: En. Sec. 7, Ch. 232, L. 1963.

48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period. (1) Immediately upon entering an application for a license, the clerk of the district court shall post in his office a notice giving the names and residences of the parties applying therefor, and the date of the application. Any parent, grandparent, child, or natural guardian thereof if a minor, brother, sister or guardian of either of the applicants for a license, or either of the applicants, or the county attorney, believing that the statements of the application are false or insufficient, or that the applicants or either of them are incompetent to marry, may file with the district court in the county in which the license is applied for, a petition under oath, setting forth the

grounds of objection to the marriage and asking for an order requiring the parties making such application to show cause why the license should not be refused. Whereupon, said court, if satisfied that the grounds of objection are prima facie valid, shall issue an order to show cause as aforesaid, returnable as the court may direct, but not more than fourteen (14) days after the date of said order, which shall be served forthwith upon the applicants for such license residing in the state, and upon the clerk before whom such application has been made, and shall operate as a stay upon the issuance of the license until further ordered; if either or both of said applicants are nonresidents of the state said order shall be served forthwith upon said nonresident by publication one time in a newspaper published in the county wherein said application is pending, and by mailing a copy thereof to said nonresident at the address contained in the application.

(2) If, upon hearing, the court finds that the statements in the application are willfully false or insufficient, or that either or both of said parties are not competent in law to marry, the court shall make an order refusing the license, and shall immediately report such matter to the county attorney. If said falseness or insufficiency is due merely to inadvertence, then the court shall permit the parties to amend the application so as to make the statements therein true and sufficient, and upon application being so amended, the license shall be issued. If any party is unable to supply any of the information required in the application, the court may, if satisfied that such inability is not due to willfulness or negligence, order the license to be issued notwithstanding such insufficiency. The costs and disbursements of the proceedings under this section shall rest in the discretion of the court, but none shall be taxed against any county attorney acting in good faith.

(3) If there be no legal objection to said application for license within five (5) days of the application, the clerk of the district court shall issue a marriage license.

History: En. Sec. 8, Ch. 232, L. 1963.

48-150. Validity of foreign marriages. (1) All marriages which are valid by the law of the state or nation where at least one (1) of the parties was domiciled at the time of the marriage and where both intended to make their home thereafter are valid in this state.

(2) All marriages which are valid by the law of the state or nation where the marriage took place are valid in this state unless invalid under the laws of the state or nation where at least one (1) of the parties was domiciled at the time of marriage and where both intended to make their home thereafter.

(3) The courts of this state may refuse to give a particular effect to a marriage contracted in another state or nation if to do so would be contrary to a strong public policy of this state.

History: En. Sec. 9, Ch. 232, L. 1963.

48-151. Waiting period after divorce. It is unlawful for any person, who is a party to an action for divorce in any court in this state, or for

any Montana resident who is a party to an action for divorce elsewhere, to marry again until six months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of six months from the date of the granting of judgment of divorce shall be void.

History: En. Sec. 11, Ch. 232, L. 1963. "Sections 48-102, 48-113, 48-117, 48-118, 48-118.2, and 48-121, R.C.M., 1947, are repealed."

Repealing Clause of Article II, Sec. 1, L. 1963 read
Section 12 of Ch. 232, Laws 1963 read

CHAPTER 2—ANNULING MARRIAGE

Section 48-202. Causes for annulling marriages.

48-203. Actions therefor—when and by whom commenced.

48-207. Legitimacy of children unaffected by annulment—custody and support orders.

48-202. (5729) Causes for annulling marriages. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of majority, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of majority, such party for any time freely cohabited with the other as husband or wife.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 110, Civ. C. 1895; re-en. Sec. 3636, Rev. C. 1907; re-en. Sec. 5729, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1963. Cal. Civ. C. Sec. 82. Based on Field Civ. C. Sec. 54.

Amendment

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in two places in subd. 1.

48-203. (5730) Actions therefor—when and by whom commenced. An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

1. For causes mentioned in subdivision 1: By the party to the marriage who was married under the age of majority within two years after arriving at the age of majority; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of majority.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 111, Civ. C. 1895; re-en. Sec. 3637, Rev. C. 1907; re-en. Sec. 5730, R. C. M. 1921; amd. Sec. 1, Ch. 169, L. 1963. Cal. Civ. C. Sec. 83.

Amendment

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in three places in subd. 1.

48-204, 48-205. (5731, 5732) Repealed.

Repeal

These sections (Secs. 112, 113, Civ. C. 1895), relating to children of annulled

marriages, were repealed by Sec. 4, Ch. 169, L. 1963.

48-207. Legitimacy of children unaffected by annulment—custody and support orders. A judgment of nullity of marriage does not affect the legitimacy of children conceived or born before the judgment, and the

judgment must so specify, and the court may during the pendency of the action, or at the time judgment is rendered or at any time thereafter make such order for the custody, care, education, maintenance and support of such children during their minority as may seem necessary or proper.

History: En. Sec. 3, Ch. 169, L. 1963. "Sections 48-204 and 48-205, R.C.M., 1947, are repealed."

Repealing Clause

Section 4 of Ch. 169, Laws 1963 read

TITLE 49—MAXIMS OF JURISPRUDENCE

CHAPTER 1—MAXIMS OF JURISPRUDENCE

49-103. (8740) Where the reason is the same, the rule should be the same.

References

Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 74.

49-108. (8745) Acquiescence in error takes away the right of objecting to it.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

49-109. (8746) No one can take advantage of his own wrong.

Loss of Right of Survivorship

Where husband feloniously killed his wife, he did not acquire by right of survivorship her share of property held jointly with him, but took the property under a constructive trust, and when he thereafter committed suicide his heirs had no right to wife's share. In re Cox' Estate, 141 M 583, 380 P 2d 584.

References

Cited in Doull v. Wohlschlager, 141 M 354, 377 P 2d 758, 765; Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

49-119. (8756) The law helps the vigilant, before those who sleep on their rights.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

TITLE 51—MONOPOLIES

Chapter 3. Montana Cigarette Sales Act, 51-301 to 51-314.

CHAPTER 3—MONTANA CIGARETTE SALES ACT

- Section 51-301. Declaration of policy.
51-302. Short title.
51-303. Definitions.
51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent.
51-305. Sales from wholesaler to wholesaler.
51-306. Combination sales.
51-307. Exceptions.
51-308. Sales to meet competition.
51-309. Contracts in violation void.
51-310. Evidence to be considered as bearing on bona fides of cost.
51-311. Cigarettes purchased outside ordinary trade channels.
51-312. Cost survey.
51-313. Civil suits for violation of act.
51-314. Powers of board.

51-301. Declaration of policy. It is hereby declared that the advertising, offering for sale or sale of cigarettes below cost, in the retail and wholesale trades, with the intent of injuring competitors or lessening competition, is an unfair and deceptive business practice. It is hereby declared to be the policy of the state to promote the public welfare and it is the purpose of this act to carry out that policy in the public interest and stabilize the sale of cigarettes, maximize and protect the state revenues from this source.

History: En. Preamble, Ch. 258, L. 1965.

Title of Act

An act to prevent unfair competition and unfair trade practices in the sale of cigarettes; to prohibit sales of cigarettes below cost; to protect and stabilize the collection of taxes on the sale of cigarettes

and revenues from the licensing of persons engaged in the sale of cigarettes; to confer powers and impose duties on the state board of equalization and on persons, as herein defined, engaged in the sale of cigarettes at retail or wholesale; and providing remedies and imposing penalties for violations thereof.

51-302. Short title. This act shall be known, designated and cited as "The Montana Cigarette Sales Act."

History: En. Sec. 1, Ch. 258, L. 1965.

51-303. Definitions. When used in this act, the following words and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning: (1) "Person" shall mean and include any individual, firm, association, company, partnership, corporation for profit or nonprofit corporation, joint stock company, club, agency, syndicate, co-operative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

(2) "Wholesaler" shall include any person who:

- (a) purchases cigarettes directly from the manufacturer; or
- (b) purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers; or
- (c) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this act.

(3) "Retailer" shall mean and include any person who operates a store, stand, booth or concession for the purpose of making sales of cigarettes at retail.

(4) "Administrative agency" or "board" shall mean the state board of equalization of Montana and, where the meaning of the context so requires, all deputies and employees duly authorized by such board.

(5) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(6) "Sale" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever.

(7) "Sell at wholesale," "sale at wholesale" and "wholesale" sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(8) "Sell at retail," "sale at retail" and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

(9) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower.

(10) (a) The term "cost to the wholesaler" shall mean the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler," as evidenced by accounting, which shall include allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance and advertising.

(b) In the absence of the filing with the board of proof which the board declares to be satisfactory of a lesser or higher cost of doing busi-

ness by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be five per centum (5 %) of the "basic cost of cigarettes" to the wholesaler, plus cartage to the retail outlet, if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the board of satisfactory proof of a lesser or higher cost, shall be considered to be three-fourths of one per centum ($\frac{3}{4}$ of 1 %) of the "basic cost of cigarettes" to the wholesaler.

(11) (a) The term "cost to the retailer" shall mean the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer," as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising; provided, that any retailer who, in connection with the retailer's purchases by a wholesaler shall, in determining "cost to the retailer," pursuant to this subsection, add the "cost of doing business by the wholesaler," as defined in section 2 [this section], subparagraph (10) of this act, to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer."

(b) In the absence of the filing with the board of satisfactory proof of a lesser or higher cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" shall be presumed to be ten per centum (10 %) of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the board of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer," who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be ten per centum (10 %) of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler."

(12) "Business day" shall mean any day other than a Sunday or a legal holiday.

History: En. Sec. 2, Ch. 258, L. 1965.

51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent. It shall be unlawful and a violation of this act:

(1) For any retailer or wholesaler with intent to injure a competitor or substantially lessen competition;

(a) To advertise, offer to sell or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as the case may be.

(b) To offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession

may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business.

(2) For any retailer:

(a) To induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than "cost to the wholesaler," as defined in this act.

(b) To induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

(3) Any retailer or wholesaler who violates the provisions of this section shall be guilty of a misdemeanor and shall be prosecuted and punished by a fine of not more than five hundred dollars (\$500) for each such offense. Any individual who, as a director, officer, partner, member or agent of any person violating the provisions of this act, assists or aids, directly or indirectly, in such violation, shall, equally with the person for whom he acts, be responsible therefor and subject to the punishment and penalties set forth herein.

(4) Evidence of advertisement, offering to sell or sale of cigarettes by any retailer or wholesaler at less than cost to him, or evidence of any offer of a rebate in price, or the giving of a rebate in price, or an offer of a concession, or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, or the inducing or attempt to induce, or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer, shall be prima facie evidence of intent to injure competitors or substantially lessen competition.

History: En. Sec. 3, Ch. 258, L. 1965.

51-305. Sales from wholesaler to wholesaler. When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter "cost to the wholesaler," as provided by section 2 [51-303], subparagraph (10) of this act, except that no such sale shall be made at a price less than the "basic cost of cigarettes," as defined in said section 2 [51-303], subparagraph (9) of this act, but the latter wholesaler, upon resale to a retailer, shall be considered to be the wholesaler governed by the provisions of said section 2 [51-303], subparagraph (10) of this act.

History: En. Sec. 4, Ch. 258, L. 1965.

51-306. Combination sales. In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and in all advertisements, offers for sale or sales involving the giving of any gift or concession of any kind whatever

(whether it be coupons or otherwise) if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, the retailer's or wholesaler's combined selling price shall not be below the "cost to the retailer" or the "cost to the wholesaler," respectively, of the total costs of all articles, products, commodities, gifts and concessions included in such transactions.

History: En. Sec. 5, Ch. 258, L. 1965.

51-307. Exceptions. The provisions of this act shall not apply to sales at retail or sales at wholesale made (a) as an isolated transaction and not in the usual course of business; (b) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale, shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or sold as imperfect or damaged, and said advertising, offer to sell, or sale, shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (c) where cigarettes are sold upon the final liquidation of a business; or (d) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

History: En. Sec. 6, Ch. 258, L. 1965.

51-308. Sales to meet competition. (a) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer as prescribed in this act. Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler, as prescribed in this act. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in section 6 [51-307] shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(b) In the absence of proof of the "price of a competitor," under this section, the "lowest cost to the retailer," or the "lowest cost to the wholesaler," as the case may be, determined by any "cost survey," made pursuant to section 11 [51-312] of this act, may be considered to be the "price of a competitor," within the meaning of this section.

History: En. Sec. 7, Ch. 258, L. 1965.

51-309. Contracts in violation void. Any contract, expressed or implied, made by any person in violation of any of the provisions of this act, is declared to be an illegal and void contract and no recovery thereon shall be had.

History: En. Sec. 8, Ch. 258, L. 1965.

51-310. Evidence to be considered as bearing on bona fides of cost. (a) In determining "cost to the retailer" and "cost to the wholesaler," the board or a court shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any person complained against under any of the provisions of this act purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Merchandise given gratis, or payment made to a retailer or wholesaler by the manufacturer thereof for display, or advertising, or promotion purposes or otherwise, shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

History: En. Sec. 9, Ch. 258, L. 1965.

51-311. Cigarettes purchased outside ordinary trade channels. In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt or closeout sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased, through the ordinary channels of trade.

History: En. Sec. 10, Ch. 258, L. 1965.

51-312. Cost survey. Where a cost survey pursuant to cost accounting practices, including those defined in section 2 [51-303] (10) (a), has been made by the board, or by a trade association or other industry group, for the trading area in which the offense is committed, to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler," said cost survey shall be considered to be competent evidence for use in proving the cost to the person complained against within the provisions of this act.

History: En. Sec. 11, Ch. 258, L. 1965.

51-313. Civil suits for violation of act. (a) In addition to penalties provided by section 3 [51-304] of this act, any person injured by any violation of this act, or any trade association which is representative of such a person, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation. If in such action a violation of this act shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorney's fee. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and fees and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this act may maintain an action for damages alone in any court of competent jurisdiction and the measure of damages in such action shall be the same as prescribed in subsection (a) of this section.

History: En. Sec. 12, Ch. 258, L. 1965.

51-314. Powers of board. (a) In addition to the penalties and rights imposed and set forth in sections 3 [51-304] and 12 [51-313] of this act, the board shall enforce the provisions of this act. The board shall have the power to adopt, amend and repeal rules and regulations necessary to enforce and administer the provisions of this act. The board is given full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state of Montana upon sufficient cause appearing of the violation of this act or upon the failure of such licensee or permittee to comply with any of the provisions of this act.

(b) No license or licenses shall be suspended or revoked except upon notice to the licensee, and after a hearing prescribed by said board at its principal office. The board, upon a finding by it that the licensee has failed to comply with any provisions of this act or any rule or regulation promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the said licensee for a period of not less than five (5) nor more than twenty (20) consecutive business days, and, in the case of a second or plural offender, shall suspend said license or licenses for a period of not less than twenty (20) consecutive business days nor more than twelve (12) months, and, in the event the board finds the offender has been guilty of willful and persistent violations, he may revoke such licensee's license or licenses.

(c) Any person whose license or licenses have been so revoked may apply to the board at the expiration of one year for a reinstatement of his license or licenses. Such license or licenses may be reinstated by the board if it shall appear to the satisfaction of said board that the licensee will comply with the provisions of this act and the rules and regulations promulgated thereunder.

(d) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever. Nor shall any disciplinary proceedings or action be barred or abated by the expiration, transfer, surrender, continuance, renewal or extension of any license issued under the provisions of the "cigarette tax law," as provided in articles of chapter 11 of the Revised Codes of Montana, 1947.

Any determination by the board and any order of suspension or revocation of a license or licenses thereunder, or refusal to reinstate a license or licensee after revocation, shall be reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction.

History: En. Sec. 13, Ch. 258, L. 1965.

Cross-Reference

Cigarette tax, secs. 84-5601 to 84-5623.

Separability Clause

Section 14 of Ch. 258, Laws 1965 read "Provisions of act severable. The provisions of this act shall be severable and if any of its sections, provisions, excep-

tions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 15 of Ch. 258, Laws 1965 repealed all acts and parts of acts in conflict therewith.

TITLE 52—MORTGAGES

- Chapter 1. Mortgages in general, 52-114, 52-116, 52-117.
2. Mortgages of real property, 52-212.
3. Security interests in personal property, 52-312 to 52-314, 52-319 to 52-323.
4. Small tract financing act, 52-401 to 52-417.

CHAPTER 1—MORTGAGES IN GENERAL

- Section 52-114. Assignment of mortgage—recording—notice—address of assignee prerequisite to recording.
52-116. Recording of subordination or waiver agreements—real estate.
52-117. Uniform Commercial Code—applicability.

52-114. (8259) Assignment of mortgage—recording—notice—address of assignee prerequisite to recording. An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons including subsequent purchasers, encumbrancers, mortgagees or other lien holders.

Any such assignment shall contain the assignee's post-office address at his place of residence, and shall not be entitled to be recorded or filed unless it contains such post-office address. [Effective January 1, 1965.]

History: En. Sec. 3823, Civ. C. 1895; re-en. Sec. 5744, Rev. C. 1907; re-en. Sec. 8259, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1925; amd. Sec. 1, Ch. 159, L. 1935; amd. Sec. 11-131, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2934.

Amendment

The 1963 amendment deleted "and an assignment of a chattel mortgage may be filed in like manner as a chattel mortgage" before "and the record thereof" in the first paragraph.

52-116. Recording of subordination or waiver agreements—real estate. That a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any real estate mortgage of record or the property therein included may be recorded in like manner as a real estate mortgage, and such record shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 126, L. 1937; amd. Sec. 11-132, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "and a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any chattel mortgage on file, or the personal

property therein described, may be filed in like manner as a chattel mortgage" before "and such record" in the first sentence; deleted "or such filing as the case may be" after "and such record" in the first sentence; and corrected an apparent typographical error which originated in the Laws of 1937.

52-117. Uniform Commercial Code—applicability. In the event of conflict between any provision of this chapter and the Uniform Commercial Code, the latter shall govern. [Effective January 1, 1965.]

History: En. 52-117 by Sec. 11-133, Ch. 264, L. 1963.

CHAPTER 2—MORTGAGES OF REAL PROPERTY

Section 52-212. Mortgages and deeds of trust covering real and personal property.

52-212. (8273) Mortgages and deeds of trust covering real and personal property. All mortgages and deeds of trust covering both real and personal property, executed by a corporation, association or partnership, or by an individual or individuals, are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned. [Effective January 1, 1965.]

History: En. Sec. 3849, Civ. C. 1895; re-en. Sec. 5756, Rev. C. 1907; amd. Sec. 1, Ch. 72, L. 1921; amd. Sec. 1, Ch. 39, L. 1927; amd. Sec. 1, Ch. 11, L. 1931; amd. Sec. 11-134, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "or assignments for the benefit of creditors" after "deeds of trust" near the beginning of the section; made minor changes in phraseology; added "so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned" at the end of the section; deleted from the end of the section language reading, "and must be recorded

in the office of the county clerk of every county where any part of said property is situated, and the same are valid, notwithstanding the possession of such property is retained by such corporation, association or partnership, or by such individual or individuals, but any such mortgages, deeds of trust, or assignments for the benefit of creditors must be accompanied by the affidavit of good faith required to accompany mortgages of personal property, and also by a receipt for an executed copy of the instrument signed on behalf of the corporation by its president, vice-president, secretary, assistant secretary or managing agent" and three other sentences, for text of which see parent volume.

CHAPTER 3—SECURITY INTERESTS IN PERSONAL PROPERTY

Section 52-312. Foreclosure of security interests in personal property—by action—by sheriff's sale.

52-313. Sales—commencement and postponement.

52-314. Report of sales, and filing thereof.

52-319. Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed.

52-320. Contents of notices.

52-321. Duty of secured parties to file satisfactions of security agreements.

52-322. Fees—disposal of.

52-323. Brand recorder or livestock commission not responsible for collection or payment of money under security agreements.

52-301 to 52-311. (8275 to 8285) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 81, L. 1907; Secs. 1 to 11, Ch. 86, L. 1913; Sec. 1, Ch. 94, L. 1915; Sec. 1, Ch. 152, L. 1919; Sec. 1, Ch. 183, L. 1919; Sec. 1, Ch. 32, L. 1923; Sec. 1, Ch. 116, L. 1925; Sec. 1, Ch. 36, L. 1941; Sec. 1, Ch. 149, L. 1949;

Secs. 1, 2, Ch. 67, L. 1961), relating to execution, filing, duration, subrogation, protection, and proof of mortgages on personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-312. (8286) Foreclosure of security interests in personal property—by action—by sheriff's sale. An action for the foreclosure of a security interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest; but the remedial scope of proceedings for the foreclosure of interests subject to the Uniform Commercial Code—Secured Transactions is governed by Part 5 thereof.

A security agreement covering personal property may contain a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, on request of the secured party and the delivery to the sheriff of a copy of such security agreement, to take possession of such property in case of default and to sell the same. If a security agreement contains such clause and if the secured party complies with the terms thereof, it is hereby made the duty of such sheriff, upon the request of the secured party or his legal representative or assigns, to take possession of such property and to advertise and sell the whole or any part of the same; and at such sale the secured party, or his representatives or assigns, may, in good faith, purchase the property so sold, or any part thereof. The sheriff shall require a reasonable indemnity bond from the secured party or his assigns before taking possession of or selling the said property. Notice of sale, application of the proceeds, liability for deficiency, and effect of disposition shall be as provided in section 9-504 [87A-9-504] of the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R. C. M. 1921; amd. Sec. 11-135, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "security interest" for "mortgage" throughout the section and made numerous other changes. For previous text, see parent volume.

52-313. (8287) Sales—commencement and postponement. All sales made under the provisions of this act shall be commenced between the hours of nine o'clock in the morning and five o'clock of the afternoon of the day specified in the notice, and within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed at the discretion of the sheriff one week, by public announcement at the time designated for the sale to take place when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the debtor. [Effective January 1, 1965.]

History: En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "debtor" for "mortgagor" at the end of the section.

Notice of Sale

Where notice of foreclosure sale of mortgaged sheep was posted out of sight of the actual sale and misnamed the location of the sale, mortgagee had failed to fulfill the strict statutory requirements in enforcing the lien and the sale was void. *Goggins v. Bookout*, 141 M 449, 378 P 2d 212.

52-314. (8288) Report of sales, and filing thereof. Within ten days after the sale of any property subject to a security interest, as herein pro-

vided, the person making the sale shall make out in writing a full report, under oath, of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received therefor, the name of the person to whom sold, the amount of the costs and expenses itemized, a copy of the notice of sale, a statement of the manner in which notice of the sale was given, and the disposition made by him of the proceeds of the sale, and shall file the same in the office of the county clerk and recorder, or other filing officer, where the financing statement respecting the security agreement is filed; which report shall be received in all courts as prima-facie evidence of the facts therein stated. The county clerk and recorder or other filing officer shall properly index said report and attach the report of sale to the financing statement on file. [Effective January 1, 1965.]

History: En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R. C. M. 1921; amd. Sec. 11-137, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "property subject to a security interest" near the beginning of the section for "mortgaged property"; substituted "a statement of the manner in which notice of the sale

was given" for "with the statement that the same was posted as herein provided"; inserted "or other filing officer" after "county clerk and recorder" in two places; substituted "financing statement respecting the security agreement" near the end of the first sentence and "financing statement" in the second sentence for "mortgage."

52-315 to 52-317. (8289 to 8290.1) Repealed.

Repeal

These sections (Secs. 15, 16, Ch. 86, L. 1913; Sec. 1, Ch. 100, L. 1923; Sec. 1, Ch. 3, L. 1941), relating to satisfaction of

chattel mortgages and to mortgages on crops and livestock, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-319. (3308.1) Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed. The general recorder of marks and brands of the state of Montana shall accept and file in the office of the general recorder of marks and brands, notices of security agreements, renewals, assignments and satisfactions thereof covering livestock owned by any person, firm, corporation, or association, and bearing his, their, or its recorded brand, and shall list such notices on the official records of marks and brands kept by him, and also shall cause to be listed said notices in the offices of the stock inspectors, employed by the livestock commission and stationed at the several central livestock markets where records are kept of marks and brands. All forms on which such notices shall be given shall be prescribed by the livestock commission and shall be furnished by the secured party, who shall give such notice. No livestock market to which livestock is shipped shall be held liable to any secured party for the proceeds of livestock sold through such livestock market by the debtor unless notice of such security agreement is filed as hereinbefore provided. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 91, L. 1935; amd. Sec. 1, Ch. 36, L. 1949; amd. Sec. 11-138, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

curity agreements," "secured party" in two places, "debtor," and "security agreement" respectively for "chattel mortgages," "mortgagee of livestock," "mortgagee," "mortgagor," and "mortgage"; and made a minor change in phraseology.

52-320. (3308.2) Contents of notices. Such notices shall consist of a statement showing the date of security agreement, the names and addresses of the debtors and secured parties, and/or holders and owners thereof, a description of the livestock covered by said security agreement, and in case of notice of renewal, the notice shall state the date of renewal thereof and in the case of a notice of assignment of a security interest, such notice shall state the date of such assignment, and a description of the security agreement as to which such assignment is made and the parties to the assignment, and such other or additional information as may be required from time to time by the livestock commission of the state of Montana. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 91, L. 1935; amd. Sec. 11-139, Ch. 264, L. 1963.

curity interest" for "mortgage" and made numerous other changes in the required contents of the notices. For previous text, see parent volume.

Amendment

The 1963 amendment substituted "se-

52-321. (3308.3) Duty of secured parties to file satisfactions of security agreements. It shall be the duty of the secured parties, who filed notices of security agreements, renewals and assignments thereof, with the general recorder of marks and brands, as provided for in this act, to file notices of satisfaction of such security agreements with the general recorder of marks and brands immediately upon the satisfaction of said security agreement. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 91, L. 1935; amd. Sec. 11-140, Ch. 264, L. 1963.

cured parties," "security agreements" in two places, and "security agreement," respectively, for "mortgagees," "chattel mortgages," "mortgages," and "mortgage."

Amendment

The 1963 amendment substituted "se-

52-322. Fees—disposal of. The general recorder of marks and brands shall charge for filing and listing such notices of security agreements the sum of one dollar (\$1.00) for each recorded brand listed in each security agreement, and for filing and listing each notice of satisfaction or renewal or assignment of such security agreement, the sum of one dollar (\$1.00) for each recorded brand listed therein. All fees so charged shall be paid into the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 4, Ch. 91, L. 1935; amd. Sec. 1, Ch. 135, L. 1953; amd. Sec. 96, Ch. 147, L. 1963; amd. Sec. 11-141, Ch. 264, L. 1963.

however, does not take effect until January 1, 1965.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund for use of the livestock commission" for "the livestock commission fund" at the end of the section.

Chapter 264, Laws 1963, substituted "security agreement" or "security agreements" for "chattel mortgage" or "chattel mortgages" in three places in the first sentence.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147, and once by Ch. 264. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments. The amendment by Ch. 264,

52-323. (3308.5) Brand recorder or livestock commission not responsible for collection or payment of money under security agreements. Neither the general recorder of marks and brands nor the livestock commission, nor any of its agents or employees shall be held responsible or liable to

either debtor or secured party for the collection or payment of any money due the holder of any security agreement covering livestock, or renewals, satisfactions, or assignments thereof as provided in this act; providing the provisions of this act are carried out in good faith. [Effective January 1, 1965.]

History: En. Sec. 5, Ch. 91, L. 1935; amd. Sec. 11-142, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "debtor or secured party" for "mortgagor or

mortgagee"; substituted "security agreement covering livestock" for "livestock mortgage"; and deleted the words "on account of the filing and listing of notices of chattel mortgage" which preceded "or renewals."

CHAPTER 4—SMALL TRACT FINANCING ACT

- Section 52-401. Short title.
 52-402. Declaration of policy.
 52-403. Definitions.
 52-404. Authorization of trust indentures.
 52-405. Qualifications of trustee.
 52-406. Reconveyance upon performance—liability for failure to reconvey.
 52-407. Time within which foreclosure must be commenced.
 52-408. Foreclosure by advertisement and sale.
 52-409. Notice of sale to be mailed, posted and published.
 52-410. Trustee's deed.
 52-411. Possession.
 52-412. Discontinuance of foreclosure proceedings when entire amount of default paid.
 52-413. Disposition of proceeds of sale.
 52-414. Deficiency judgment not allowed.
 52-415. Requests for copies of notice of sale.
 52-416. Trustee's fees and attorney's fees.
 52-417. Trust indenture deemed to be mortgage on real property.

52-401. Short title. This act may be cited as the "Small Tract Financing Act of Montana."

History: En. Sec. 1, Ch. 177, L. 1963.

Title of Act

An act authorizing the optional use of trust indentures as security instruments in the financing of small tracts embracing three acres of land, or less; providing for the conveyance of title to a trustee to secure the performance of an obligation and for reconveyance upon performance; conferring a power of sale upon the trustee under a trust indenture and prescribing the time and manner in which such power may be exercised; providing for the sale of the property at trustee's sale in the event of default; prescribing the form of notice of sale and providing for the recordation, mailing, posting and publication of notice of sale; providing for

trustee's deeds and the form and effect thereof; providing for the disposition of the proceeds of sale; disallowing deficiency judgment in certain cases; providing for possession following sale; defining the fees and expenses chargeable to the grantor of a trust deed; providing for discontinuance of foreclosure by advertisement and sale; relating to the applicability of mortgage laws to trust indenture transactions; amending sections 93-6005, 93-6006, and 93-6007, R.C.M. 1947, relating to sales of real estate under powers of sale in mortgages and rights of redemption, to exclude therefrom trust indentures as defined in this act; and providing a short title, a severability clause and an effective date.

52-402. Declaration of policy. Because the financing of homes and business expansion is essential to the development of the state of Montana, and because such financing, usually involving areas of real estate of not more than three acres, has been restricted by the laws relating to mortgages of real property, and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it

is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than three acres as hereinafter provided.

History: En. Sec. 2, Ch. 177, L. 1963.

52-403. Definitions. As used in this act, unless the context requires otherwise:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) "Trust indenture" means an indenture executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture, or his successor in interest.

(5) "Three acres" means three acres of land.

Where the trust indenture states that the real property involved does not exceed three acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make a transfer, trust, and power of sale.

History: En. Sec. 3, Ch. 177, L. 1963.

52-404. Authorization of trust indentures. Transfers in trust of any interest in real property of an area not exceeding three acres may be made to secure the performance of an obligation of a grantor, or any other person named in the indenture, to a beneficiary; provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on the effective date of this act. Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security; and a trust indenture executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

History: En. Sec. 4, Ch. 177, L. 1963.

52-405. Qualifications of trustee. (1) The trustee of a trust indenture under this act shall be:

(a) An attorney who is licensed to practice law in Montana; or

(b) A bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) A title insurance or abstract company authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture, or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

History: En. Sec. 5, Ch. 177, L. 1963.

52-406. Reconveyance upon performance—liability for failure to reconvey. Upon performance of the obligation secured by the trust indenture, the trustee upon written request of the beneficiary shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

History: En. Sec. 6, Ch. 177, L. 1963.

52-407. Time within which foreclosure must be commenced. The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

History: En. Sec. 7, Ch. 177, L. 1963.

52-408. Foreclosure by advertisement and sale. (1) The trustee may foreclose a trust indenture by advertisement and sale under this act if:

(a) The trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture, or some part thereof, is situated;

(b) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust indenture, or by their successors in interest, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(c) The trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in the indenture, or some part thereof, is situated, a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

(i) The names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;

(ii) A description of the property covered by the trust indenture;

(iii) The book and page of the mortgage records where the trust indenture is recorded;

(iv) The default for which the foreclosure is made;

(v) The sum owing on the obligation secured by the trust indenture;

(vi) The trustee's or beneficiary's election to sell the property to satisfy the obligation;

(vii) The date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9:00 a.m. and 4:00 p.m., Mountain Standard Time;

(viii) The place of sale which shall be at the courthouse of the county or one of the counties where the property is situated, or at the location of the property, or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

(2) A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided.

History: En. Sec. 8, Ch. 177, L. 1963.

52-409. Notice of sale to be mailed, posted and published. (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) The grantor, at the grantor's address as set forth in the trust indenture, or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) Each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) Each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request.

(iv) Any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) Any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold;

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least 3 public places in each county in which the property, or some part thereof, is situated. The posting or the last pub-

lication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting and publication showing compliance with the requirements of this section. On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels and any person, including the beneficiary under the trust indenture, but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to re-sell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

History: En. Sec. 9, Ch. 177, L. 1963.

52-410. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this act relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under subsection (2) of section 9 [52-409 (2)] of this act, shall be prima-facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest and claim of the grantor and his successors in interest and of all persons claiming by, through or under them, in and to the property sold including all such right, title, interest and claim in and to such property acquired by the grantor or his successors in interest subsequent to the execution of the trust indenture.

History: En. Sec. 10, Ch. 177, L. 1963.

52-411. Possession. The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale,

and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

History: En. Sec. 11, Ch. 177, L. 1963.

52-412. Discontinuance of foreclosure proceedings when entire amount of default paid. Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal, or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred. If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute, acknowledge and deliver to him a request that the trustee execute, acknowledge and deliver a cancellation of the recorded notice of sale under such trust indenture. Any beneficiary under a trust indenture, or his assignee, who, for a period of 30 days after such demand refused to request the trustee to execute, acknowledge and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded and a statement that such notice of sale is canceled.

History: En. Sec. 12, Ch. 177, L. 1963.

52-413. Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows: (1) To the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

(2) To the obligation secured by the trust indenture;

(3) The surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

History: En. Sec. 13, Ch. 177, L. 1963.

52-414. Deficiency judgment not allowed. When a trust indenture executed in conformity with this act is foreclosed by advertisement and sale, no other or further action, suit or proceedings shall be taken, nor judgment entered for any deficiency, against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond or other obligation secured by the trust indenture, or against any other person obligated on such note, bond or other obligation.

History: En. Sec. 14, Ch. 177, L. 1963.

52-415. Requests for copies of notice of sale. At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in subsection (1) of section 9 [52-409(1)] of this act may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

History: En. Sec. 15, Ch. 177, L. 1963.

52-416. Trustee's fees and attorney's fees. Reasonable trustee's fees and attorney's fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and the trust indenture shall be reinstated in accordance with provisions of section 12 [52-412] of this act, the reasonable trustee's fees and attorney's fees to be charged to the grantor shall not exceed \$150.00. In no event shall trustee's fees and attorney's fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

History: En. Sec. 16, Ch. 177, L. 1963.

52-417. Trust indenture deemed to be mortgage on real property. A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this act, in which event the provisions of this act shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

History: En. Sec. 17, Ch. 177, L. 1963.

Separability Clause

Section 21 of Ch. 177, Laws 1963 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part

remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 22 of Ch. 177, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

TITLE 53—MOTOR VEHICLES

- Chapter 1. Registration of motor vehicles—duties of registrar, 53-101, 53-102, 53-106, 53-106.1, 53-106.7, 53-108, 53-110, 53-112 to 53-114, 53-117 to 53-118.5, 53-119.1, 53-122, 53-129, 53-133, 53-139.
4. Elimination of reckless driving—responsibility of motor vehicle owners and operators, 53-420.
 6. Additional fees or taxes on motor vehicles, 53-615, 53-618, 53-638.1, 53-642.
 7. Reciprocity and proportional registration, 53-701 to 53-724.
 8. Markings on trucks and heavy vehicles, 53-801 to 53-803.

CHAPTER 1—REGISTRATION OF MOTOR VEHICLES— DUTIES OF REGISTRAR

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| Section | 53-101. | Duties of registrar of motor vehicles—records. |
| | 53-102. | Penalty for violations—enforcement of provisions. |
| | 53-106. | Number plates. |
| | 53-106.1. | Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles. |
| | 53-106.7. | Distinctive plates for national guardsmen. |
| | 53-108. | Renewal of registration. |
| | 53-110. | Filing of liens, rights, procedure, fees. |
| | 53-112. | Fee for original certificate of ownership and transfer of title. |
| | 53-113. | Lost certificates. |
| | 53-114. | Application for registration of motor vehicles and payment of license fees thereon. |
| | 53-117. | Disposition of taxes. |
| | 53-118. | Application for dealer's license. |
| | 53-118.1. | Demonstration of trucks and trailers authorized—dealer's plate to be used. |
| | 53-118.2. | Application for truck demonstration permit—form and contents—number of permits authorized. |
| | 53-118.3. | Operation under truck demonstration permit—period of permit—rental under permit prohibited. |
| | 53-118.4. | Violation of truck demonstration provisions. |
| | 53-118.5. | Disposition of truck demonstration fees. |
| | 53-119.1. | Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue. |
| | 53-122. | Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees. |
| | 53-129. | Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt. |
| | 53-133. | Definitions. |
| | 53-139. | Penalty for sale of vehicle with engine number altered or changed—application for special number. |

53-101. (1755) Duties of registrar of motor vehicles—records. 1. The warden of the state penitentiary shall be, and is hereby constituted the registrar of motor vehicles, trailers and semitrailers, of motor and accessories dealers [and of operators and chauffeurs, and as such it shall be his duty to keep a record as hereinafter specified of all motor vehicles, trailers and semitrailers of every kind, and certificates of registration and ownership thereof, of all dealers in motor vehicles and automobile accessories and of operators and chauffeurs.

2. In the case of motor vehicles, trailers and semitrailers, the record shall show the following: Name of owner, residence by town and county, business address, name and address of conditional sales vendor, mortgagee or other lien holder and amount due under contract or lien, manufacturer of car, manufacturer's designation of style of car or vehicle, identifying number, year of manufacture, character of motive power and shipping weight of car as shown by the manufacturer and the distinctive license number assigned such car or vehicle; and, if a truck or trailer, the number of tons capacity, and such other information as may from time to time be found desirable.

3. The registrar shall file applications for registration received by him from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

(a) Under distinctive license number assigned to vehicle by the county treasurers.

(b) Alphabetically under name of owners.

(c) Numerically under make and identifying number of vehicle.

(d) Such other index of registration as registrar shall deem expedient.

4. In the case of dealers the records shall show the] information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer.

5. The registrar of motor vehicles shall appoint such deputies, subordinate officers, clerks, investigators and other employees as may be necessary to carry out this act, providing there be selected as many of the clerical help from the inmates of the state prison as the registrar determines to be possible. The salaries of all such appointees shall be fixed by the registrar of motor vehicles as authorized by the state board of examiners, with respect to salaries of other subordinate state officers and employees.

6 to 8. * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 75, L. 1917; re-en. Sec. 1755; R. C. M. 1921; amd. Sec. 1, Ch. 177, L. 1925; amd. Sec. 1, Ch. 129, L. 1927; amd. Sec. 1, Ch. 181, L. 1929; amd. Sec. 1, Ch. 159, L. 1933; Subdivisions 5 and 6 amd. Secs. 1, 2, Ch. 62, L. 1943; amd. Sec. 1, Ch. 208, L. 1957; amd. Sec. 22, Ch. 177, L. 1965; amd. Sec. 1, Ch. 256, L. 1965.

Compiler's Note

This section was amended twice in 1965, once by Ch. 177 and once by Ch. 256. Chapter 177, apparently through clerical error, omitted the latter part of subsection 1, all of subsections 2 and 3, and the first part of subsection 4; chapter 256, however, contained the portions thus erroneously omitted from chapter 177. Since the two amendments do not otherwise appear to conflict, the compiler has made a composite section incorporating the changes made by both amendatory acts and has

placed brackets around the language that appears to have been omitted from Ch. 177 by error.

Amendments

Chapter 177, Laws 1965, deleted from the beginning of subsection 5 a sentence reading, "The registrar of motor vehicles shall qualify by giving a bond of twenty-five thousand dollars (\$25,000.00), providing for the faithful performance of his duty"; substituted "The registrar of motor vehicles" for "He" at the beginning of the present first sentence of subsection 5; and, apparently through clerical error, omitted the portions of subsections 1, 2, 3 and 4 enclosed in brackets above.

Chapter 256, Laws 1965, substituted "information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer" for "name of the applicant, his residence and address

by town and county, his business address, the distinctive number assigned him, and the name or names of new cars handled by him" at the end of subsection 4.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-102. (1755.1) Penalty for violations—enforcement of provisions. The violation of any of the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108, 53-109, 53-114, 53-115, 53-116, 53-117, 53-119, 53-120 and 53-121, shall constitute a misdemeanor and shall be punishable by a fine of not exceeding twenty-five dollars (\$25.00). Nothing herein contained shall prevent the prosecution of a person for an offense committed under any other law.

It is hereby made mandatory upon all police and peace officers of the state, of the counties of the state, and of towns, cities and villages to carry out the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108 and 53-109, and sections 53-114 to 53-121.

History: En. Sec. 2, Ch. 158, L. 1931; amd. Sec. 1, Ch. 122, L. 1961; amd. Sec. 2, Ch. 256, L. 1965.

Amendment

The 1965 amendment deleted section 53-118 from the list of sections in the first sentence of the first paragraph.

53-106. (1757) Number plates. (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle by the registrar of motor vehicles. Such number plate shall be in eight series: one series for owners of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type, one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including trucks and trailers) which shall bear the distinctive letter "D" or the [word] "DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be renewed annually, shall bear a distinctive marking each year, and shall be furnished by the state.

(2) In the case of motor cars, number plates shall be of metal six inches wide and twelve inches in length, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate and the required serial numbers and letters thereon shall be treated with a reflectorized background material or numerals and border according to specifications prescribed by the registrar. An additional fee of fifty (50) cents per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to

the state treasurer for deposit in the general fund of the state of Montana. The distinctive registration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a dash or a dot unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words 'State Owned' and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be renewed by the registrar of motor vehicles at such time when the physical condition of numbered plates require same. For vehicles owned by the counties, municipalities and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers.

Number plates assigned to any motor vehicle shall be used only on the specific motor vehicle to which originally assigned.

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone,

41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57.

History: En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R. C. M. 1921; amd. Sec. 2, Ch. 158, L. 1933; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965.

Amendment

The 1965 amendment substituted the second, third, and fourth sentences of subsection (2) for "Such registration plate and the required serial numbers and letters thereon, shall be of sufficient size and spacing to be plainly readable from a distance of 100 feet during daylight. The registrar shall, in his discretion, choose to select permanent number or identification plates with a yearly insert plate or

tab bearing the last two numbers of the year for which such license is issued and such insert plate or tab shall be serially numbered in the same manner as the numbered plates, and such permanent number or identification plates shall be made in such form and of such materials as the registrar shall determine; provided further, that the registrar may, in his discretion, designate number or identification plates for any year as the proper means of identifying the vehicle for a subsequent year or years, said plates to be validated by a windshield sticker of such size, color and design and displayed as he shall direct; such sticker shall bear a distinctive number and the registration period for which it is issued, after which period it shall be unlawful to further display same on the vehicle."

53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles. Any owner of a motor vehicle manufactured more than thirty (30) years prior to the year 1963, solely as a collectors' item and not for general transportation purposes may file with the registrar of motor vehicles an application for the registration of such motor vehicle stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number, and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes; and said application shall be sworn to before an officer authorized to administer oaths. The registration fee for all such motor vehicles weighing twenty-eight hundred and fifty (2850) pounds or less shall be five dollars (\$5.00), and the registration fee for all such motor vehicles weighing more than twenty-eight hundred and fifty (2850) pounds shall be ten dollars (\$10.00).

Upon receipt of said application for registration and payment of the registration fee above provided for the registrar shall file said application and register the motor vehicle therein described in the manner specified in section 53-101, and shall deliver to the applicant two (2) license plates bearing the inscription, "Pioneer—Montana" and the registration number, but the year of issuance shall not be shown thereon. No annual renewal of the registration of any such motor vehicle shall be required, and the same shall be valid as long as the vehicle is in existence; provided, however, that upon any sale of such motor vehicle, the purchaser shall be required to renew the registration thereof and pay the license fees hereinbefore specified.

History: En. 53-106.1 by Sec. 1, Ch. 123, L. 1955; amd. Sec. 1, Ch. 86, L. 1963.

(30) years prior to the year 1963" in the first part of the first paragraph for "thirty (30) years prior to the date of the application referred to hereunder."

Amendment

The 1963 amendment substituted "thirty

53-106.7. Distinctive plates for national guardsmen. In addition to the regular license plates prescribed by law, there may be issued to each active member of the Montana national guard, distinctive license plates, bearing the words "national guard" and "Montana," said plates to be numbered in sets of two with a different number following the letters "NG." Plates shall be furnished by the registrar of motor vehicles to the adjutant general, and by him, issued to the members of the active guard. The adjutant general shall inform the said registrar of each set so issued, giving the number of the license, the name, unit and home address of the member to whom issued, and shall be responsible for the recovery of said plates and notification to the registrar upon the member becoming ineligible to use them. Plates so issued shall be placed or mounted on the vehicle over the regular license plate, and shall be removed upon sale or other disposition of the vehicle. Said distinctive plates shall be renewed concurrently with the issuance of the regular motor vehicle license plates.

History: En. Sec. 1, Ch. 135, L. 1965.

plates for motor vehicles owned by active members of the Montana national guard.

Title of Act

An act to provide for distinctive license

53-107. (1758) Certificates of registration and ownership, etc.

References

western Mutual Ins. Co., 142 M 155, 382
Safeco Ins. Co. of America v. North- P 2d 174.

53-108. (1758.1) Renewal of registration. Every vehicle registration under this act shall expire on December thirty-first of each year and shall be renewed annually upon application and payment of license fees, as provided in sections 53-114 and 53-122, such renewal to take effect on the first day of January of each year. The certificate of registration issued hereunder shall be valid during the registration year only for which issued, and the certificates of ownership shall remain valid until canceled by the registrar of motor vehicles upon a transfer of any interest shown therein and need not be renewed annually. Upon annual renewal, whenever the legal owner of the vehicle is other than the registered owner, the registrar of motor vehicles shall immediately notify such legal owner by mail of the registration number assigned to such vehicle for the ensuing year.

The owner of a vehicle registered under the provisions of this act shall be entitled to operate such vehicle between January first and February fifteenth without displaying the registration certificate of the current year, on condition that such owner shall, during said period, display upon such vehicle the number plates or plate assigned thereto for the previous year.

Any purchaser of a motor vehicle from a duly licensed motor vehicle dealer which has not been registered or reregistered for the current

year may during the time of (the) certificate of ownership thereto is in the process of being transferred in the office of the registrar of motor vehicles, upon making an affidavit to that effect upon a form prescribed by the registrar of motor vehicles and upon the payment of a fee of two dollars (\$2.00) to be collected by the county treasurer and remitted to the registrar of motor vehicles, obtain from the county treasurer of the county in which said vehicle is subject to tax a temporary windshield sticker of such size, color and design as the registrar of motor vehicles may prescribe, to be validated by the county treasurer for a period of thirty (30) days from the date of issuance, and such purchaser, upon displaying such sticker on the lower right-hand corner of the windshield of such motor vehicle and upon displaying the number plates or plate assigned thereto for the previous year (unless the seller has been unable to deliver such previous year's plate or plates) shall be entitled to operate such vehicle during the period for which such windshield sticker has been validated without displaying the registration certificate or number plates or plate for the current year. Provided, however, the county treasurer shall not sell, or no person shall purchase more than one (1) thirty (30) day temporary windshield sticker for any vehicle, the ownership of which has not changed since the issuance of the previous thirty (30) day windshield sticker. Provided, further, however, that any purchaser of a new motor vehicle from a duly licensed motor vehicle dealer shall have the grace period of three (3) days from the date of purchase to make such application for registration and obtain registration plates, and it shall not be a violation of this chapter or any other law for such purchaser to operate such new motor vehicle upon the streets and highways of this state without a certificate of registration and registration plates during the said three-day period; providing further that such purchaser must have in his possession a valid bill of sale or other satisfactory evidence of ownership.

History: En. Subd. 2, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified in the first sentence in the third

paragraph from \$1.00 to \$2.00; and substituted "registrar of motor vehicles" for "board" in two places in the same sentence.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 241 M 155, 382 P 2d 174.

53-109. (1758.2) Transfer of title or interest.

Incomplete Transfer

Chattel mortgages given for the purchase of an automobile were without consideration where vendor failed to obtain certificates of registration and ownership from the registrar of motor vehicles which were necessary to pass title to the buyer. *Sonnek v. Universal C.I.T. Credit Corp.*, 140 M 503, 374 P 2d 105, 108, explained in 142 M 155, 382 P 2d 174.

Where neither buyer nor auto dealer made any attempt to comply with this section, there was no transfer of ownership

of damaged auto even though it had been in the possession of buyer for several days after the agreement to buy, and dealer's insurer, not buyer's, was primarily liable for damages to the auto. *Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co.*, 142 M 155, 382 P 2d 174, distinguished in 227 F Supp 978, 981.

Where buyer paid entire purchase price of automobile to seller, he took possession thereof as a "nonowned automobile" under liability policies of buyer extending coverage to operation of nonowned automobiles

by insured or any relative, the transfer not complying with this section because of failure of seller to sign transfer on certificate of title and because no new certificate of title had been issued to buyer. *Colbrese v. National Farmers Union Property & Casualty Co.*, 227 F Supp 978, 982.

53-110. (1758.3) Filing of liens, rights, procedure, fees. (a). * * *
[Same as parent volume.]

(b) Satisfaction or statements of release filed with the registrar of motor vehicles under this act shall be retained by him for a period of eight (8) years after receipt, after which they may be destroyed. Chattel mortgages, conditional sales contracts, leases, or other liens filed with the registrar, and all renewals and assignments thereof, shall be retained by him for a period of eight (8) years after the maturity date stated in such mortgage, conditional sales contract, lease, or other lien, or renewal, or if no maturity date is therein stated, for a period of thirteen (13) years after receipt, after which they may be destroyed.

(c) From and after the filing of any mortgage, conditional sales contract, lease, or other lien, or copy thereof on any motor vehicle, as herein provided, then and in that event such mortgage, conditional sales contract, lease or other lien shall be constructive notice of the said mortgage, conditional sales contract, lease or other lien and its contents to subsequent purchasers and encumbrancers.

(d) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle the mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available upon delivery to the sheriff of the original instrument or a copy certified by the registrar of motor vehicles and such undertaking as may be required by the sheriff. In case of attachment of motor vehicles all the provisions of section 93-4338 shall be applicable except that deposits must be made with the registrar of motor vehicles.

(e) In the event any conditional sales vendor or assignee or chattel mortgagee or assignee fails to file a satisfaction of a chattel mortgage, assignment or conditional sales contract within fifteen days after receiving final payment on such mortgage, assignment, or conditional sales contract he shall be required to pay the registrar of motor vehicles the sum of one dollar (\$1.00) for each and every day thereafter that he fails to file such satisfaction.

(f) and (g). * * * [Same as parent volume.]

(h) A fee of two dollars (\$2.00) shall be paid to the registrar of motor vehicles upon and for filing any lien or lien instrument against any motor vehicle, and said fee of two dollars (\$2.00) shall further include and cover the cost of filing a satisfaction or release of the lien or lien instrument, and, also, the cost of endorsing such satisfaction or release on the face of the certificate of ownership or on the records of the registrar, or both. A fee of two dollars (\$2.00) shall be paid the registrar of motor vehicles for issuing a certified copy of a chattel mortgage, conditional sales contract or other lien, or instrument of encumbrance on file in the office of the registrar, or for filing any assignment of any instrument

on file with the registrar. All fees provided for in this section shall be deposited by the registrar in the earmarked revenue fund.

History: En. Subd. 4, Sec. 2, Ch. 159, L. 1933; amd. Sec. 7, Ch. 72, L. 1937; amd. Sec. 3, Ch. 148, L. 1943; amd. Sec. 3, Ch. 63, L. 1945; amd. Sec. 11-143, Ch. 264, L. 1963; amd. Sec. 26, Ch. 121, L. 1965.

Amendments

The 1963 amendment completely rewrote subsection (b), for previous text of which see parent volume; inserted "or conditional sales contract" near the beginning of subsection (d); substituted "mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available" in subsection (d) for "mortgagee may foreclose his mortgage as in the case of other personal property, and upon default under a conditional sales contract covering a motor vehicle the vendor shall have the remedies prescribed by section 74-207"; substituted the reference to section 93-4338 in the latter part of subsection (d) for a reference to section 52-

309; deleted the words "instead of the county treasurer" from the end of subsection (d); and made minor changes in phraseology and punctuation in subsection (d).

The 1965 amendment deleted from the end of subsection (e) a sentence reading "All moneys paid to the registrar of motor vehicles under this section shall revert to the automobile theft fund"; increased the fees in subsection (h) for filing liens and releases from \$1.00 to \$2.00, for certified copies from 50¢ to \$2.00, and for filing assignments from 50¢ to \$2.00; and added the last sentence to subsection (h).

Notice of Prior Interest

Where auto repairman failed to ascertain true ownership of auto before making repairs, the filing of conditional sales contract with the registrar of motor vehicles by assignee prior to repairman's lien established a dominant interest under subsection (c) of this section. *Williamson v. Skerritt*, 141 M 422, 378 P 2d 215.

53-112. (1758.4) Fee for original certificate of ownership and transfer of title. A charge of two dollars (\$2.00) shall be made for issuance of an original certificate of ownership of title and for a transfer of registration which shall be collected by the county treasurer. The fees shall be distributed as follows:

(a) One dollar (\$1.00) of each fee shall be remitted to the registrar of motor vehicles by the county treasurer with each application for original certificate of ownership or transfer of registration.

(b) Prior to March 1, 1966 and each March thereafter, the county commissioners of each county shall divide the fees retained by the county to

(i) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town, and

(ii) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns.

History: En. Subd. 5, Sec. 2, Ch. 159, L. 1933; amd. Sec. 8, Ch. 72, L. 1937; amd. Sec. 27, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified in the first sentence from \$1.00 to \$2.00; inserted "and for a transfer of registration" in the first sentence; deleted "for the registrar of motor vehicles the first time any vehicle is registered by any owner" from the end of the first sentence; and substituted the second sen-

tence and paragraphs (a) and (b), including subparagraphs (i) and (ii), for sentences reading, "Said charge of one dollar (\$1.00) shall be remitted to the registrar of motor vehicles by the county treasurer with each application for registration. Upon a transfer of registration by the owner, there shall be forwarded to the registrar of motor vehicles, the certificate of ownership or title and registration card, properly filled out and executed, together with a transfer fee of one dollar (\$1.00)."

53-113. (1758.5) Lost certificates. In the event any certificate of registration or ownership shall be lost, mutilated or become illegible, the person to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon furnishing satisfactory information to the registrar of such facts and upon payment of a fee of two dollars (\$2.00).

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified at the end of the section from \$1.00 to \$2.00.

53-114. (1759) Application for registration of motor vehicles and payment of license fees thereon. (1) to (4). * * * [Same as parent volume.]

(5) Motor vehicles are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be the subject to assessment, levy and taxation more than once in each year.

(6) The applicant for original registration of any wholly new and unused motor vehicle acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 53-617, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

(7) Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1st in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "taxes on this vehicle due January 1st of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R. C. M. 1921; amd. by repeal Subd. 4, Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963.

Amendment

The 1963 amendment deleted the words

"except as hereinafter provided" which followed "Motor vehicles" at the beginning of subsection (5); deleted from the end of subsection (5) a proviso reading, "and provided, further, that new motor vehicles, and used motor vehicles which have not previously been assessed and licensed during the current year, when held for sale in the stock of any duly licensed motor vehicle dealer or used motor vehicle dealer, are hereby declared to be merchandise and shall be assessed as of the first Monday in March in each year

in the same manner as other stocks of merchandise"; and deleted from the end of the second paragraph of subsection (7) a clause reading, "and in case such motor vehicle shall have been assessed for taxation as a part of the stock of merchandise of a licensed dealer, the county treasurer shall indicate such fact by proper entry on said application, and the applicant for

registration shall not be required to pay the personal property tax on any motor vehicle so assessed as merchandise."

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-117. (1759.3) Disposition of taxes. The county treasurer shall credit all taxes on motor vehicles so collected to a motor vehicle suspense fund and, at some time between March 1 and March 10 of each year, and every sixty (60) days thereafter, the county treasurer shall distribute the same in relative proportions required by the levies for state, county, school district and municipal purposes in the same manner as other personal property taxes are distributed.

History: En. Subd. 4, Sec. 1, Ch. 158, L. 1933; amd. Sec. 4, Ch. 72, L. 1937; amd. Sec. 1, Ch. 154, L. 1943; amd. Sec. 1, Ch. 200, L. 1945; amd. Sec. 29, Ch. 121, L. 1965.

Amendment

The 1965 amendment deleted from the end of the section sentences reading, "All motor vehicle license fees collected by the county treasurer shall be credited to the motor vehicle license fund hereby established. The cost of making and delivering license plates and identification marks, certificates, and all other expense of oper-

ating the motor vehicle department of the state of Montana, shall be paid out of the motor vehicle recording fund (sometimes called the motor vehicle administrative fund); provided, however that each county shall receive its pro rata share of any license fees, except dealer license fees, paid to the registrar of motor vehicles. The remainder in said county motor vehicle license fund shall be transferred by the county treasurer at the end of each month to the road fund of said county and shall be used by the county for the purpose set forth in section 53-122."

53-118. (1759.4) Application for dealer's license. Every person, firm, corporation, or association who, for commission or profit, engages in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, used motor vehicles, trailers, or semitrailers and qualifies under subparagraph (f) of this section, shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for licensing as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein required. The application and all of the information therein contained shall be verified by the sheriff of the county in which the business is to be conducted, as designated in subparagraph (b) below. A fee of two dollars (\$2) shall be paid to the sheriff for such verification. Each application must be accompanied by the license fee hereinafter named. Dealers license must be renewed and paid for annually, and an application for relicensing must be filed not later than January first of each year. To qualify for licensing and the issuance and use of "D," "UD," or "DTR" plates, as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) The name under which the business is conducted;

(b) Location of premises (street, address, city, county and state) where records are kept, sales are made and stock of motor vehicles displayed;

(c) Name and address of all owners or persons having an interest in the business; provided, however, that in the case of a corporation, the names and addresses of the president and secretary thereof will be sufficient;

(d) Name and make of all vehicles handled, if factory franchised or selling under a written agreement with a manufacturer, importer or distributor;

(e) Whether or not used vehicles are handled exclusively;

(f) A certificate to the effect that the applicant is a bona fide dealer in motor vehicles, trailers or semitrailers; and that the applicant if a dealer in new motor vehicles, is recognized by a manufacturer, importer or distributor as a dealer in particular makes of new motor vehicles.

(g) Other information required by the registrar to efficiently administer this law.

The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of one thousand dollars (\$1,000.00), and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the registrar of motor vehicles and filed in his office.

The registrar of motor vehicles shall not register or license as a dealer any applicant for the sale of new motor vehicles at retail unless such applicant owns, leases or rents a permanent building wherein he shall conduct his business and who has a dealers franchise from a manufacturer of motor vehicles. A private residence, tent, or temporary building is not a sufficiently permanent place of business within the meaning of this section. The registrar of motor vehicles shall not register or license any applicant as a dealer in used cars unless such applicant furnishes sufficient evidence to the registrar that he has a building or lot to provide display of merchandise, a sign indicating the firm name and headquarters as the principal place of the business.

Upon making such application, the applicant shall pay to the registrar of motor vehicles, in addition to the fees required of dealers under the provisions of section 53-122, a fee of five dollars (\$5). Upon receipt of the application, fee and bond, as provided above, the registrar of motor vehicles shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the registrar of motor vehicles is satisfied that the applicant qualifies for the issuance of a dealer's license under the provisions of this act, he may thereupon issue the same.

Every dealer licensed under this section shall keep a book or record of the purchase, sale or exchange or receipt for the purpose of sale, of any used vehicle, a description of such vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom such vehicle was purchased or received, or to whom it was sold or delivered, as the case may be. Such description in the case of motor vehicles shall also include the engine number, if any, the maker's number, if any, chassis number, if any, and such other numbers or identi-

fication marks as may be thereon, and shall include a statement that a number has been obliterated, defaced or changed, if such is the fact. In the case of a trailer or semitrailer, the record shall include the manufacturer's number and such other numbers or identification marks as may be thereon. He shall also have in his possession a duly assigned certificate of title from the owner of said motor vehicle in accordance with the provisions of another section of this act, from the time when the motor vehicle is delivered to him until it has been disposed of by him.

Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, or trailer or semitrailer dealer, the registrar of motor vehicles shall assign to such dealer a distinctive serial license number as a dealer and furnish every qualified dealer in motor vehicles with not less than two (2) sets of number plates, and as many more as the fee the dealer pays entitles the dealer to, which number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer sells new motor vehicles (including trucks and trailers) or new and used motor vehicles (including trucks and trailers); the letters "UD" if the dealer sells used motor vehicles (including trucks and trailers) only; and the letters "DTR" if the dealer sells trailers and/or semitrailers (new or used) only. Only new motor vehicle dealers' license plates bearing the letter "D" shall be assigned if both new and used motor vehicles (including trucks and trailers) are sold, and only one license fee shall be required of any one dealer. Dealers properly licensed under this section are authorized to use and display, dealer's license plates on any motor vehicle held for sale or used principally in the conduct of the dealer's business in selling, or demonstrating motor vehicles. No dealer's license plate shall be used or displayed on vehicles normally used exclusively for hire or for purposes not incident to the business of a motor vehicle dealer. If it shall appear to the satisfaction of the registrar of motor vehicles, from information furnished to him by the sheriff or any other law enforcement officer, that any such dealer has been improperly licensed, has used the dealer's license in a manner other than the one permitted above, or is not qualified as a dealer under the requirements of this section, the registrar of motor vehicles may revoke such dealer's license. No person, firm, corporation or association shall, for commission or profit, engage in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, trailers or semitrailers unless duly licensed in compliance with this section.

Any person violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not less than fifty (\$50.00) dollars and not more than three hundred (\$300.00) dollars. For the purposes hereof, every sale of a motor vehicle in violation of the provisions of this section shall be deemed a separate offense.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965.

Amendment

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

53-118.1. Demonstration of trucks and trailers authorized—dealer's plate to be used. A new or used truck or trailer dealer licensed under the provisions of section 53-118 may demonstrate to a prospective purchaser any truck, truck tractor, trailer or semitrailer, owned by or consigned to said dealer, or otherwise controlled by said dealer, by payment of the fees required in this section; provided the vehicle displays the dealers registration plate or other current Montana registration and the demonstration permit provided in section 2 [53-118.2] of this act.

History: En. Sec. 1, Ch. 36, L. 1965.

Title of Act

An act to permit the movement of trucks and trailers for demonstration purposes; providing for a permit therefor;

providing for the fee for such permit; providing for the issuance, validation and duration of such permits; providing for a penalty and providing for the disposition of fees.

53-118.2. Application for truck demonstration permit—form and contents—number of permits authorized. The licensed dealer shall obtain the demonstration permit upon application to the Montana highway commission and payment of eight (\$8) dollars for each permit and the payment of this fee shall be in lieu of fees required under section 53-615. The form of such permits and the application therefore [therefor] shall be provided by the state highway commission under such rules and regulations as they may prescribe and shall be designed so that the licensed dealer may fill in the necessary information thereon and such permit will be validated by the dating, inserting of name and address of the prospective purchaser, and affixing thereto the signature of said licensed dealer. The licensed dealer may obtain more than one (1) but not to exceed five (5) demonstration permits with each application.

History: En. Sec. 2, Ch. 36, L. 1965.

53-118.3. Operation under truck demonstration permit—period of permit—rental under permit prohibited. Vehicles displaying said permit may be operated either laden or unladen. Each of the said permits shall expire seven (7) days from and after the date of validation by the licensed dealer.

A demonstration permit shall not be issued to the same prospective purchaser for the demonstration of the same vehicle or vehicles for more than one (1) seven (7) day period.

The vehicle operating with the demonstration permit shall not be leased or rented by the licensed dealer or operated for compensation by the licensed dealer whatsoever.

History: En. Sec. 3, Ch. 36, L. 1965.

53-118.4. Violation of truck demonstration provisions. Violation of any provision of this section shall be deemed a misdemeanor and subject to the provision of section 53-623. For the purposes of this section, a licensed dealer shall be considered the owner.

History: En. Sec. 4, Ch. 36, L. 1965.

53-118.5. Disposition of truck demonstration fees. Fees collected under this section shall be disposed of in the manner provided in section

53-621 R. C. M., 1947, originally enacted as section 7, chapter 219, Laws of 1951.

History: En. Sec. 5, Ch. 36, L. 1965.

53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue. A vehicle, subject to license under Title 53, may be moved unladen upon the highways of this state from a point within the state to a point of destination, the county treasurer at the point of the origin of the movement, shall issue a special permit therefor in lieu of fees required under sections 53-122 and 53-615, upon application presented to him in such form as shall be provided by the registrar of motor vehicles and upon exhibiting to said county treasurer proof of ownership and evidence that the personal property taxes on such vehicle, if any are due thereon, have been paid and upon payment therefor a fee of five dollars (\$5). Such permit shall not be in lieu of fees and permits required under sections 53-630 through 53-638.

Such permit shall be for the transit of the vehicle only, and the vehicle shall not at the time of such transit, be used for the transportation of any persons, except the driver, or property whatsoever for compensation or otherwise, and shall be for one (1) transit only between the points of origin and destination as set forth in the application and shown on the permit.

For the purpose of this section, a mobile home shall be considered unladen, when all items are removed, except the equipment originally installed by the manufacturer; and personal effects of owners.

Definition of a mobile home—house trailer for the purposes of this section. A trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for movement on streets and highways, and exceeds twenty-five (25) feet in length, exclusive of trailer hitch.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965.

Amendment

The 1965 amendment substituted the first paragraph for a sentence reading, "When any vehicle subject to license is to be moved upon the public highways of this state, from one point to another, the

county treasurer may issue a special permit therefor upon application presented to him in such form as shall be approved by the registrar of motor vehicles and upon payment therefor of a fee of five dollars (\$5.00)"; added "and shown on the permit" at the end of the second paragraph; and added the third and fourth paragraphs.

53-122. (1760) Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees. Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, house trailers, semitrailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

Dealers in motor vehicles other than motorcycles, a minimum fee of thirty dollars (\$30.00) which shall entitle such dealer to two (2) sets of number plates, and five dollars (\$5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars (\$2.00) additional fee for each additional set of number plates, as may be applied for by such dealer; provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms;

Dealers in motorcycles, trailers including house trailers, fifteen dollars (\$15.00);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars (\$5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks ten dollars (\$10.00);

Electrically driven passenger vehicles, ten dollars (\$10.00);

All motorcycles, two dollars (\$2.00);

Tractors and/or trucks, ten dollars (\$10.00);

Buses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars (\$2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars (\$5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars (\$10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars (\$15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires.

Bicycles with motor attachment, one dollar (\$1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

[All license or registration fees collected by the county treasurer of the county in which any motor vehicle is registered shall be credited to the motor vehicle license fund of said county. The funds in said county motor vehicle fund shall be used as follows:

(a) Fifty per cent (50%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any incorporated city of the state of Montana, having a

population of thirty-five thousand (35,000) or more, or the owners of which reside within the boundaries of any incorporated city of the state of Montana which lies within one (1) mile of the city limits of an incorporated city of the state of Montana having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, and twenty-five per cent (25%) of the net license fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of any city in the state of Montana having a population of ten thousand (10,000), or more, according to the federal census of 1950, and which city is situated in a county which has an area of less than seven hundred and fifty (750) square miles, shall be held by the county treasurer and segregated from other county road funds and designated as "city road fund," to be used in the city from which fees were derived for the construction of permanent streets within the incorporated limits of such city.

(b) The license fees held in the city road fund, as hereinbefore provided, at the end of each thirty (30) day period beginning March 1, 1955, be paid by the county treasurer to the city treasurer to be held by such city treasurer in a separate fund designated as the "city road fund," shall be used by the city council of such city having the population of thirty-five thousand (35,000) or more, or by the city council of such city which lies within one (1) mile of the city limits of an incorporated city of the state of Montana, having a population of thirty-five thousand (35,000) or more, according to the federal census of 1930, or by the city council of such city having a population of ten thousand (10,000), or more, according to the federal census of 1950 and situated in a county which has an area of less than seven hundred and fifty (750) square miles, only for the construction of permanent highways and streets within the boundaries of such incorporated city. Provided, that all construction of public highways and streets, the cost of which is to be paid out of the fund derived from the license fees as herein provided, shall be under the supervision of the county surveyor of the county within whose boundaries such city is situated, subject to the control of the said city council and surveyor to designate the public highway or street upon which the work is to be done, and the type of pavement to be used, and provided further, that the cost of the supervision of the county surveyor shall not exceed five per cent (5%) of the cost of said work.

(c) In every county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above, the net license fee derived from the registration of motor vehicles shall be by the registrar of [registrar of] motor vehicles transmitted to, and paid over to the county treasurer of each such county and shall be allocated and divided by the county treasurer as hereinafter provided. The motor vehicle license fund in each such county shall be divided between accounts designated as "city road fund" and "county road fund" in a prorata manner based upon the total number of miles of all public streets and highways situated within the limits of incorporated cities and towns within each county as compared with the total number of miles of public

streets and highways situated within the county, but outside the corporate limits of any incorporated cities and towns.]

[The license fees held in the city road fund, as hereinabove provided shall be at the end of each thirty (30) day period beginning March 1, 1964, be paid by the county treasurer to the treasurer of each incorporated city or town within the county in a pro rata manner based upon the number of miles of all public streets and highways situated within such city or town as compared to the total number of miles of all public streets and highways within the limits of all incorporated cities and towns within the county. The city or town treasurer shall hold said moneys in a separate fund designated as the "city road fund" which shall be used by the city or town council only for the construction and repair of streets and highways within the corporate limits of such incorporated city or town.]

[The net license fees derived from the registration of vehicles shall be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county.]

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half ($\frac{1}{2}$) of the regular fee above given.

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of two dollars (\$2.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

All fees, other than license fees, unless otherwise specifically provided, shall hereafter be deposited in, and paid into, the earmarked revenue fund and shall be used to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, including

the manufacturer and delivery of license plates. Any reference in this code to the motor vehicle recording fund or the motor vehicle administration fund shall be taken to mean the motor vehicle recording account in the earmarked revenue fund.

[The board of county commissioners of each county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above shall prior to March 1 of each year, beginning with the year 1964, determine the number of miles of public streets and highways situated in each incorporated city and town in the county, and the number of miles of public streets and highways within the county, but outside the corporate limits of the incorporated cities and towns, in order that the motor vehicle license and registration fees can be divided between the "county road fund" and each "city road fund" in the pro rata manner as provided in this act. The board of county commissioners shall at the same time also compute the percentage of said motor vehicle license and registration fees to be paid by the county treasurer to the treasurer of each incorporated city and town and also the percentage to be deposited in the county road fund.]

History: En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R. C. M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965.

Compiler's Notes

This section was amended twice in 1965, once by Ch. 121 and once by Ch. 197. Chapter 197 deleted several paragraphs but does not become effective until December 31, 1966. For this reason and because the two amendments do not appear to conflict otherwise, the compiler has left the paragraphs deleted by Ch. 197 in place but has enclosed them in brackets.

The compiler has also inserted brackets around the words "registrar of" within paragraph (c) to denote surplusage.

Amendments

Chapter 147, Laws 1963 substituted "the earmarked revenue fund and shall be used to pay" in what is now the next to last paragraph for "the motor vehicle recording fund of said registrar (sometimes called the motor vehicle administrative fund) out of which shall be paid"; added the second sentence to the same paragraph; deleted

a former next to last paragraph reading, "There shall be immediately transferred from the motor vehicle fund of the registrar of motor vehicles to the said motor vehicle recording fund all moneys now in said motor vehicle fund which were collected by the registrar of motor vehicles as fees other than license fees"; and substituted "motor vehicle recording account" for "motor vehicle recording fund" in the paragraph later deleted by Ch. 121, Laws 1965.

Chapter 178, Laws 1963, completely re-wrote paragraph (c), for previous text of which see parent volume; inserted two new paragraphs immediately after paragraph (c); and added the last paragraph of the section.

Chapter 121, Laws 1965, adopted both 1963 amendments; increased the fee for change of ownership by registered dealer from \$1.00 to \$2.00 in the fifth paragraph after paragraph (c); substituted "unless otherwise specifically provided" for "mentioned and described in sections 53-110 and 53-112, and in section 53-135" near the beginning of the present next to last paragraph; and deleted a next to last paragraph reading, "Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording account more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county."

Chapter 197, Laws 1965, deleted the paragraphs enclosed in brackets above, effective December 31, 1966.

Cross-Reference

Property tax stickers required on house trailers, secs. 84-6601 to 84-6605.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-129. (1760.7) Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt. Before any foreign licensed motor vehicle shall be operated on the highways of this state for hire, compensation or profit, or before the owner thereof uses the vehicle while engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the owner of such vehicle shall make application to a county treasurer for registration, upon an application form furnished by the registrar of motor vehicles. Upon satisfactory evidence of ownership submitted to such county treasurer, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle. The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration Receipt" and forward a duplicate copy of certificate of registration to the registrar of motor vehicles. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license. The registration receipt shall not constitute evidence of ownership, but shall only be used for registration purposes. No Montana certificate of title shall be issued for this type of registration. This paragraph shall not be applicable to any vehicle which is a part of an interstate fleet registered and licensed under the provisions of section 53-114, nor to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of this act.

History: En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955; amd. Sec. 26, Ch. 206, L. 1963.

Amendment

The 1963 amendment deleted former subsections (2) and (3), for text of which see parent volume; and, at the end of the present section, substituted "under the provisions of this act" for "as hereinafter set forth."

53-133. (1763) Definitions. The words and phrases used in this act shall be construed as follows, unless the context may otherwise require:

a to f. * * * [Same as parent volume.]

g. The term "dealer" shall mean and include any person, firm, association, or corporation engaged in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who is qualified for issuance of a dealer's license under section 53-118, and no person, firm, association or corporation shall be issued a dealer's license by the registrar of motor vehicles unless they qualify as a dealer defined herein. The term "dealer" does not include the following: (1) Receivers, trustees, administrators, executors,

guardians or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction; or (2) employees of such persons when engaged in the specific performance of their duties as such employees; or (3) public officers while performing or in the operation of their duties. A dealer dealing in used cars only shall deliver to the buyer on completion of sale a transferable title, and shall purchase a Montana store license.

h to j. * * * [Same as parent volume.]

k. The term "manufacturer" shall include any person, firm, corporation or association engaged in the manufacture of any motor vehicles, trailers, or semitrailers as a regular business. Dealer shall deliver, under oath, a notarized certificate with any used motor vehicle, stating the full name and last known address of the previous owner of said motor vehicle, and state where the motor vehicle was last registered.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965.

Amendment

The 1965 amendment divided the language in former paragraph g into the present first and third sentences of paragraph g; inserted "association" after "firm" in two places in the first sentence of paragraph g; substituted "exchanging, or acting as a broker of" for "repairing, and reconditioning" after "business of buying, selling" in the first sentence of paragraph g; substituted "is qualified for issuance of a dealer's license under section 53-118" for "maintains a place of business with adequate facilities and equipment for the servicing, repair, maintenance, and reconditioning of new or used motor vehicles and also adequate display facilities for at least one motor vehicle" in the first sentence of paragraph g; deleted from the end of the present first sentence of paragraph g a proviso reading, "provided, however, that a used car dealer only shall have a building as an established place of business and need no facilities for repair, maintenance and reconditioning of used

cars"; inserted the second sentence in paragraph g; inserted "A dealer dealing in used cars only" at the beginning of the third sentence of paragraph g; and added the last sentence to paragraph k.

Repealing Clauses

Section 5 of Ch. 256, Laws 1965 read "Section 53-138, R. C. M. 1947, is repealed."

Section 7 of Ch. 256, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 6 of Ch. 256, Laws 1965 read "If any clause, sentence, paragraph or part of this act shall be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph or part directly adjudged to be invalid or inoperative."

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-138. (1763.6) Repealed.

Repeal

This section (Sec. 14, Ch. 113, L. 1925; Sec. 1, Ch. 221, L. 1947), relating to the

licensing of used car dealers, was repealed by Sec. 5, Ch. 256, Laws 1965.

53-139. (1763.7) Penalty for sale of vehicle with engine number altered or changed—application for special number. (1) Any person or persons, firm or corporation, who, thirty days after the taking effect of this section, shall sell or offer for sale in this state a vehicle, the original engine number of which has been destroyed, removed, altered, covered or defaced, with the exception of electrically propelled vehicles shall be

deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than two hundred dollars, nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than thirty days nor more than one hundred and eighty days, and upon a second or subsequent conviction under this section, the punishment shall be imprisonment in the state prison for a term of not less than one year nor more than five years: Provided, however, that any person or persons, firm or corporation, being the owner or custodian of or having possession of a vehicle at the time of the taking effect of this article, the original engine number of which has been previously destroyed, removed, altered or defaced, shall before the expiration of thirty days after the taking effect of this article apply to the registrar of motor vehicles on a blank to be prepared and furnished by the registrar of motor vehicles upon request, for permission to make or stamp, or cause to be made or stamped on the engine of such vehicle, a special engine number.

(2) * * * [Same as parent volume.]

(3) Upon receipt of such application, together with a fee of two dollars (\$2.00), the registrar of motor vehicles shall issue to said applicant written permission to make or stamp on the engine of such vehicle a special engine number to be designated by the registrar of motor vehicles, and when such special engine number so designated has been stamped or otherwise placed on the engine of such motor vehicle it shall become and thereafter be the lawful engine number of such vehicle, for the purpose of identification and registration and for all other purposes under the provisions of this chapter, and the owner thereof may sell or transfer the same under said special engine number so designated by the registrar of motor vehicles; and any person or persons who shall destroy, remove, cover, alter or deface any special engine number so designated by the registrar of motor vehicles shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term of not less than two years nor more than ten years.

(4) In designating special engine numbers for motor vehicles under the provisions of this chapter the registrar of motor vehicles shall designate and number the same consecutively, beginning with the number (1), preceded by the letters S. N. and followed by the letters for each and every make of motor vehicle for which a special application engine number shall be made, and in the order of the filing of application therefor: Provided, that from and after the taking effect of this section, the registrar of motor vehicles shall not register any vehicle without an engine number or issue a license for the operation of the same except as specifically provided for herein; and further, before issuing said license the registrar of motor vehicles shall require of the applicant a statement that the special number assigned to be placed on the particular vehicle in question has been put on in a workmanlike manner, and this statement shall be certified to by the sheriff, chief of police, or other convenient peace officer, that he has inspected said vehicle and found said number to be on said motor vehicle as required by the registrar of motor vehicles. Nothing herein shall [be] construed to prevent any manufacturer or

importer, or their agents other than dealers, from doing his own numbering on motor vehicles or parts removed or changed and replacing the numbered parts.

History: En. Sec. 15, Ch. 113, L. 1925; amd. Sec. 31, Ch. 121, L. 1965.

Compiler's Note

The compiler has inserted the bracketed word "be" in the final sentence of subsection (4).

Amendment

The 1965 amendment increased the fee specified near the beginning of subsection (3) from \$1.00 to \$2.00; and made minor changes in subsections (1) and (4).

CHAPTER 2—USE OF HIGHWAYS BY NONRESIDENT CAR OWNERS— ACCIDENTS—SERVICE OF PROCESS

53-204. Repealed.

Repeal

This section (Sec. 4, Ch. 10, L. 1937; Sec. 10, Ch. 117, L. 1961), relating to

service of process on nonresident motorist, was repealed by Sec. 2, Ch. 189, Laws 1963.

CHAPTER 4—ELIMINATION OF RECKLESS DRIVING—RESPONSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS

Section 53-420. Supervisor to furnish operating record.

53-418. Definitions.

References

Schwentner v. White, 199 F Supp 710, 711.

53-420. Supervisor to furnish operating record. The supervisor shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this act, which abstract shall also fully designate the motor vehicles, if any registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the supervisor shall so certify. A fee of one dollar (\$1.00) shall be paid for said certified abstract.

History: En. Sec. 3, Ch. 204, L. 1951; amd. Sec. 17, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified in the final sentence from 50¢ to \$1.00.

CHAPTER 6—ADDITIONAL FEES OR TAXES ON MOTOR VEHICLES

Section 53-615. Additional fees on trucks, tractors, trailers and semitrailers.

53-618. Time for payment of fees—half fee after July first.

53-638.1. Exemptions of vehicles not capable of operation on highways.

53-642. "Special mobile equipment" defined.

53-615. Additional fees on trucks, tractors, trailers and semitrailers. In addition to other fees for the licensing of vehicles, there shall be paid

and collected annually for each motor truck and truck-tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I:

Up to 6,000 lbs. -----	\$ 6.00
6,001 lbs. or more, and less than 8,000 lbs. -----	10.00
8,001 lbs. or more, and less than 10,000 lbs. -----	14.00
10,001 lbs. or more, and less than 12,000 lbs. -----	16.00
12,001 lbs. or more, and less than 14,000 lbs. -----	18.00
14,001 lbs. or more, and less than 16,000 lbs. -----	22.00
16,001 lbs. or more, and less than 18,000 lbs. -----	30.00
18,001 lbs. or more, and less than 20,000 lbs. -----	40.00
20,001 lbs. or more, and less than 22,000 lbs. -----	50.00
22,001 lbs. or more, and less than 24,000 lbs. -----	75.00
24,001 lbs. or more, and less than 26,000 lbs. -----	100.00
26,001 lbs. or more, and less than 28,000 lbs. -----	125.00
28,001 lbs. or more, and less than 30,000 lbs. -----	165.00
30,001 lbs. or more, and less than 32,000 lbs. -----	210.00
32,001 lbs. or more, and less than 34,000 lbs. -----	255.00
34,001 lbs. or more, and less than 36,000 lbs. -----	300.00
36,001 lbs. or more, and less than 38,000 lbs. -----	345.00
38,001 lbs. or more, and less than 40,000 lbs. -----	390.00
40,001 lbs. or more, and less than 42,000 lbs. -----	435.00

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight described above, and as set by the licensee in his application except as otherwise provided in this act the following fees:

Schedule II:

Trailers Other Than House Trailers.

Up to 2,500 lbs. for personal use -----	Exempt
Up to 2,500 lbs. for commercial use -----	\$ 3.50
2,501 lbs. or more, and less than 6,000 lbs. -----	4.50
6,001 lbs. or more, and less than 8,000 lbs. -----	12.00
8,001 lbs. or more, and less than 10,000 lbs. -----	14.00
10,001 lbs. or more, and less than 12,000 lbs. -----	16.00
12,001 lbs. or more, and less than 14,000 lbs. -----	18.00
14,001 lbs. or more, and less than 16,000 lbs. -----	22.00
16,001 lbs. or more, and less than 18,000 lbs. -----	30.00
18,001 lbs. or more, and less than 20,000 lbs. -----	40.00
20,001 lbs. or more, and less than 22,000 lbs. -----	50.00
22,001 lbs. or more, and less than 24,000 lbs. -----	75.00
24,001 lbs. or more, and less than 26,000 lbs. -----	100.00
26,001 lbs. or more, and less than 28,000 lbs. -----	125.00
28,001 lbs. or more, and less than 30,000 lbs. -----	165.00
30,001 lbs. or more, and less than 32,000 lbs. -----	210.00
32,001 lbs. or more, and less than 34,000 lbs. -----	255.00

34,001 lbs. or more, and less than 36,000 lbs. -----	300.00
36,001 lbs. or more, and less than 38,000 lbs. -----	345.00
38,001 lbs. or more, and less than 40,000 lbs. -----	390.00
40,001 lbs. or more, and less than 42,000 lbs. -----	435.00

In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the licensee in his application, except as otherwise provided in this act, a fee equal to fifty cents (50¢) for each foot of over-all trailer body length, exclusive of bumpers and hitch.

Provided, that in addition to the fees provided for in Schedules I and II of this act, for each motor truck, truck-tractor, trailer, or semitrailer hauling loads in excess of forty-two thousand (42,000) pounds and within the weight limits specified in section 32-1123, there shall be collected a fee of fifty dollars (\$50.00) for each two thousand (2,000) pounds, or fraction thereof.

Provided further, on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to be used on the farm, orchard or dairy, one truck-tractor and low-boy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture, except motor trucks owned and operated by co-operative associations or co-operative marketing associations, shall be paid and collected annually a fee equal to twenty per cent (20%) of the fees provided in Schedule I and Schedule II above; provided, however, the minimum fee under Schedule I and Schedule II shall be four dollars (\$4.00). The terms "trailers and semitrailers" as used herein shall not include farm wagons.

Provided further, that there shall be paid and collected annually a fee equal to seventy-five per cent (75%) of the fees provided in Schedule I and Schedule II above on pole trailers; trucks, truck-tractors, trailers and semitrailers used exclusively in hauling livestock, logs, and ready-mix concrete; truck-tractors and low-boy trailers used exclusively in hauling equipment; and truck-tractors drawing or hauling said low-boy trailers.

When the gross weight license fee applied for on any vehicle exceeds twenty-four thousand (24,000) pounds, licenses for motor trucks, trailers, tractors, pole trailers, or semitrailers may be purchased for a three-months' period for one-fourth ($\frac{1}{4}$) the regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar (\$1.00) shall be charged. The state highway commission is authorized to establish rules and regulations relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

No vehicle licensed under the provisions of this section shall be operated over the public highways unless the owner and/or operator thereof within ten (10) days after the expiration of any such three-month period apply for, and pay the required fee for, a license for an additional three-month period, or for the remainder of the year. Any person who operates any such vehicle upon the public highways after the expiration of said ten (10) days, shall be guilty of a misdemeanor, and in addition shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation thereof, less the fees for any period or periods of the year already paid. If, within five (5) days thereafter, no license for a full year has been purchased as required aforesaid, the Montana highway patrol, county sheriff or city police shall impound such vehicle in such manner as may be directed for such cases by the supervisor of the Montana highway patrol, until such requirement is met.

Provided further, that there shall be paid and collected annually for each bus or auto stage with the exception of school buses the sum of seven dollars (\$7.00) per seat exclusive of the first seven (7) seats and the operator, for the maximum adult seating capacity thereof; provided further, that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule hereinabove established; provided further, that school buses shall not be exempt if they enter charter service.

History: En. Sec. 1, Ch. 219, L. 1951; amd. Sec. 1, Ch. 139, L. 1953; amd. Sec. 1, Ch. 258, L. 1955; amd. Sec. 1, Ch. 150, L. 1963; amd. Sec. 1, Ch. 195, L. 1965.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3301 to 32-3309.

Amendments

The 1963 amendment deleted a proviso reading, "Provided, that in lieu of the additional fee provided in this section there shall be collected a fee of five dollars (\$5.00) on any motor truck, truck-tractor, trailer or semitrailer used only for the purpose of transporting any air compressor, rock crusher, conveyor, hoist, wrecker, donkey engine, cook house, tool house or bunk house attached to or made a part of such motor truck, trailer or semitrailer"; and, in the present third proviso, substi-

tuted "pole trailers; trucks, truck-tractors, trailers and semitrailers used exclusively in hauling livestock, logs, and ready-mix concrete; truck-tractors and low-boy trailers used exclusively in hauling equipment; and truck-tractors drawing or hauling said low-boy trailers" for "motor trucks, trailers and semitrailers, used exclusively in hauling livestock, logs, ready-mix concrete and pole trailers and on 'low-boy trailers,' used exclusively for the hauling of equipment and on tractors permanently attached to such 'low-boy trailers.'"

The 1965 amendment inserted "one truck-tractor and low-boy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture" in the second proviso.

Repealing Clause

Section 2 of Ch. 195, Laws 1965 repealed all acts and parts of acts in conflict therewith.

53-615.1 to 53-617. Repealed.

Repeal

These sections (Secs. 2 and 3, Ch. 219, L. 1951; Sec. 1, Ch. 177, L. 1955; Sec. 1, Ch. 251, L. 1955; Sec. 1, Ch. 103, L. 1959; Sec. 1, Ch. 211, L. 1959; Sec. 1, Ch. 193, L. 1961), relating to additional fees pay-

able for trucks and trailers and to sales tax on new vehicles, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3310, 32-3312 and 32-3315.

53-618. Time for payment of fees—half fee after July first. Residents of the state of Montana, or nonresidents, who own trucks, trailers or semi-trailers, buses and operate the same upon the highways of the state of Montana shall at the time they make application for their Montana license as provided for under section 53-615, pay the fees herein prescribed; provided that said residents or nonresidents who make application for a license after the first day of July of any year shall pay one-half (½) of the fees provided for herein.

History: En. Sec. 4, Ch. 219, L. 1951; amd. Sec. 1, Ch. 175, L. 1955; amd. Sec. 1, Ch. 224, L. 1965.

Repeal

This section is repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-3201.

Amendment

The 1965 amendment deleted "or new passenger automobiles" after "buses"; and substituted the reference to section 53-615 for a reference to section 53-114.

53-619. Time for payment of fees by nonresidents.

Repeal

This section (Sec. 5, Ch. 219, L. 1951; Sec. 1, Ch. 89, L. 1955), relating to the payment of fees by nonresidents, was

repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-3314.

53-621 to 53-623. Repealed.

Repeal

These sections (Secs. 7 to 9, Ch. 219, L. 1951; Sec. 1, Ch. 226, L. 1959), relating to

fees and penalties for trucks and trailers, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-625. Repealed.

Repeal

This section (Sec. 11, Ch. 219, L. 1951; Sec. 1, Ch. 231, L. 1957), relating to re-

ciprocity and fleet registration, was repealed by Sec. 27, Ch. 206, Laws 1963.

53-628 to 53-631. Repealed.

Repeal

These sections (Secs. 14, 15, Ch. 219, L. 1951; Secs. 1, 2, Ch. 133, L. 1953; Sec. 1, Ch. 104, L. 1957), relating to markings of

trucks and buses, municipal taxes, and to drive-away and tow-away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-634 to 53-638. Repealed.

Repeal

These sections (Secs. 5 to 9, Ch. 133, L. 1953), relating to drive-away and tow-

away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-638.1. Exemptions of vehicles not capable of operation on highways. Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, shall not be subject to any of the terms and provisions of Title 53, R.C.M. 1947.

History: En. Sec. 3, Ch. 150, L. 1963.

Effective Date

Section 4 of Ch. 150, Laws 1963 pro-

vided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

53-639. Repealed.

Repeal

This section (Sec. 1, Ch. 183, L. 1955), relating to special mobile equipment, was

repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-642. "Special mobile equipment" defined. "Special mobile equipment" means every vehicle which is not designed and used primarily for the transportation of persons or property on a public highway and which is operated or moved over the highway from construction project to construction project, and not removed from the confines and haul roads thereof, except for movement from construction project to storage yard, from storage yard to construction project, or from storage yard or construction project to point of repair or maintenance and return. Special mobile equipment includes, but is not limited to portable air compressors, air drills, asphalt spreaders, gravel crushing equipment and hot plant equipment, buckets, belt and front-end loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, earth moving scrapers and carry-alls, lighting, generating and power plants, welders, pumps, power shovels and draglines, cranes, crane mounted heel-boom log loaders, fork-lift trucks, lumber carriers, bunk-houses, tool houses, shop cars, oil distributors, scales and scale houses, and conveyors. It also includes self-propelled tractor-drawn earth moving equipment, dump trucks and tractor-dump trailer combinations which, because of excess width, height, length, or unladen weight, cannot be moved over a public highway without a permit as provided in section 32-1127, R.C.M. 1947, and which are operated unladen except within the boundaries of the project limits, as defined by the contract, and adjacent haul roads. However, the term "special mobile equipment" shall not include a vehicle such as a truck, truck-tractor, trailer, semitrailer, house trailer, or house car, designed for the transportation of persons or property.

History: En. Sec. 4, Ch. 183, L. 1955; amd. Sec. 2, Ch. 150, L. 1963.

Amendment

The 1963 amendment substantially re-wrote this section. For previous version, see parent volume.

53-643. Repealed.

Repeal

This section (Sec. 5, Ch. 183, L. 1955), relating to identification plates for special

mobile equipment, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 7—RECIPROCITY AND PROPORTIONAL REGISTRATION

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|---------|--|
| Section | 53-701. Declaration of policy. |
| | 53-702. Definitions. |
| | 53-703. Montana motor vehicle reciprocity board creation. |
| | 53-704. Authority of Montana motor vehicle reciprocity board. |
| | 53-705. Authority for reciprocity agreements, provisions, reciprocity standards. |
| | 53-706. Base state registration reciprocity. |
| | 53-707. Proportional registration of fleet vehicles. |
| | 53-708. Declarations of extent of reciprocity. |
| | 53-709. Extension of reciprocal privileges to lessees authorized. |
| | 53-710. Automatic reciprocity. |
| | 53-711. Proportional registration not exclusive. |
| | 53-712. Proportional registration of fleet vehicles, application, fee-formula and payment. |

- 53-713. Registration and identification of proportionally registered vehicles, effect of such registration.
- 53-714. Proportional registration cannot be in a single jurisdiction.
- 53-715. Registration of additional fleet vehicles.
- 53-716. Withdrawal of fleet vehicles, credits and accounting.
- 53-717. New fleet—estimated mileage.
- 53-718. Fleet registration may be denied.
- 53-719. Preservation of proportional registration records.
- 53-720. Relation to other state laws.
- 53-721. Suspension of reciprocity benefits.
- 53-722. Agreements to be written, filed and available for distribution.
- 53-723. Reciprocity agreements in effect at time of act.
- 53-724. Act part of and supplement to motor vehicle registration law.

53-701. Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries with respect to vehicles registered in this and such other states, provinces, territories and countries thus contributing to the economic and social development and growth of this state.

History: En. Sec. 1, Ch. 206, L. 1963.

Title of Act

An act relating to motor vehicles; creating, amending and repealing laws on motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries, so as to conform substantially with the model reciprocity and proration draft proposed by the national committee on uniform traffic laws

and ordinances; providing a declaration of policy, definitions, creation of Montana motor vehicle reciprocity board, and authority of said board; and providing other related sections for carrying out the policy, construction and administration of this act; providing a severability clause; amending section 53-129, R.C.M., 1947, as amended; repealing section 53-625, R.C.M., 1947, as amended; providing an effective date.

53-702. Definitions. As used in this act: (1) "Commercial vehicle" means any vehicle which is operated in more than one state and used for the transportation of persons for hire, compensation or profit, or designed or used primarily for the transportation of property.

(2) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country and a state or province of a foreign country.

(3) "Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

(4) "Legal residence," as used in this act only, means a jurisdiction where the person lives or conducts his business. Such residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in this act shall be confined to the definition given, and shall not be confused with the word

“domicile.” This definition of “residence” further recognizes that a person may have several residences, but only one domicile.

(5) (a) “Properly registered,” as applied to place of registration means:

(i) The jurisdiction where the person registering the vehicle has his legal residence, or

(ii) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from such place of business and, the vehicle has been assigned to such place of business, or

(iii) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the Montana motor vehicle reciprocity board shall make the final determination, but in making such determination, the Montana motor vehicle reciprocity board may confer with departments of the other jurisdictions affected.

(6) “Fleet” means two (2) or more commercial vehicles.

(7) “Person,” for purposes of this act, means every natural person, firm, copartnership, association, or corporation.

(8) “Motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(9) “Vehicle” means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(10) “Preceding year” means a period of twelve (12) consecutive months fixed by the Montana motor vehicle reciprocity board which period shall be within sixteen (16) months immediately preceding the commencement of the registration or license year for which proportional registration is sought; and the Montana motor vehicle reciprocity board in fixing such period shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

History: En. Sec. 2, Ch. 206, L. 1963.

53-703. Montana motor vehicle reciprocity board creation. (1) There is hereby created for the purpose of administration of this act, the Montana motor vehicle reciprocity board, which shall consist of six (6) members to be appointed by the governor. One of said members shall be the registrar of motor vehicles; one shall be a member of the Montana highway patrol; one shall be a member of the Montana state highway commission; one shall be a member of the state board of equalization; one shall be an attorney from the legal staff of the Montana state highway

commission; and one shall be the gross vehicle weight supervisor. In lieu of any above-named member, the governor may instead appoint a qualified representative from the commission, board or office designated. The members of the board shall meet in Helena, Montana, within two weeks after the effective date of this act. At the said first meeting and annually in December thereafter, the board shall elect a secretary who shall be a member of said board, and the board shall elect a chairman and a vice-chairman from its own membership who shall hold office for one (1) year. Election as chairman and vice-chairman shall not interfere with the member's right to vote on all matters before the board. The board shall meet at such other times as it deems advisable, but at least once every two (2) calendar months, and shall from time to time adopt rules and regulations for the administration of this act as may be deemed necessary.

(2) The board shall act collectively in harmony with recorded resolutions or motions adopted by the majority of the board at regular or special meetings, notice of which meetings shall be given to all members pursuant to the rules of said board. Four (4) members shall constitute a quorum at any meeting; but no resolution, motion, or other decision of the board shall be adopted or passed without the favorable vote of at least four (4) members.

History: En. Sec. 3, Ch. 206, L. 1963.

53-704. Authority of Montana motor vehicle reciprocity board. The Montana motor vehicle reciprocity board shall have the authority to execute or make arrangements, agreements or declarations to carry out the provisions of this act.

History: En. Sec. 4, Ch. 206, L. 1963.

53-705. Authority for reciprocity agreements, provisions, reciprocity standards. The Montana motor vehicle reciprocity board may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdictions, and for which evidence of compliance is supplied, benefits, privileges and exemptions from payment, wholly or partially, of any taxes, fees, or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this state. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of such other jurisdiction, shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this state. Each such agreement or arrangement shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of the state and the citizens thereof and shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 5, Ch. 206, L. 1963.

53-706. Base state registration reciprocity. An agreement or arrangement entered into, or a declaration issued under the authority of this act may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

History: En. Sec. 6, Ch. 206, L. 1963.

53-707. Proportional registration of fleet vehicles. If any jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registration fees, license fees, taxes or other fixed fees thereon on an apportionment basis commensurate with and determined by the miles traveled on and the use made of said jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in other jurisdiction under such apportionment basis from the requirements of full payment of its own registration, license fees, taxes or other fixed fees, then the Montana motor vehicle reciprocity board may, by agreement, adopt such exemption with respect to vehicles of such fleets, whether owned by residents or nonresidents of this state and regardless of where based. Such agreements, under such terms, conditions or restrictions as the Montana motor vehicle reciprocity board deems proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state shall be permitted to pay registration, license fees, taxes or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. No such agreement shall authorize, or be construed as authorizing, any vehicle so registered to be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission, if such grant is otherwise required by law. The Montana motor vehicle reciprocity board may adopt and promulgate such rules and regulations as it shall deem necessary to effectuate and administer the provisions of this subsection, and the registration of fleet vehicles under this act shall be subject to the rights, terms and conditions granted by or contained in any applicable agreement, arrangement or declaration made by the Montana motor vehicle reciprocity board.

History: En. Sec. 7, Ch. 206, L. 1963; amd. Sec. 1, Ch. 88, L. 1965.

cense fees, taxes" for "license taxes" near the beginning of the section and "license fees, taxes" for "license" following "registration" in two places.

Amendment

The 1965 amendment substituted "li-

53-708. Declarations of extent of reciprocity. In the absence of an agreement or arrangement with another jurisdiction, the Montana motor

vehicle reciprocity board may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of this state and the citizens thereof, which shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 8, Ch. 206, L. 1963.

53-709. Extension of reciprocal privileges to lessees authorized. An agreement or arrangement entered into, or a declaration issued under the authority of this act, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration.

History: En. Sec. 9, Ch. 206, L. 1963.

53-710. Automatic reciprocity. On and after the effective date of this act, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this act, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other jurisdictions to vehicles properly registered in this state. Reciprocity extended under this subsection shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

History: En. Sec. 10, Ch. 206, L. 1963.

53-711. Proportional registration not exclusive. Nothing contained in this act relating to proportional registration of fleet vehicles shall be construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation, regular registration, temporary registration, or trip permit or registration.

History: En. Sec. 11, Ch. 206, L. 1963.

53-712. Proportional registration of fleet vehicles, application, fee-formula and payment. (1) Any owner engaged in operating one or more fleets may, in lieu of registration of vehicles under other sections of Title 53, register and license each fleet for operation in this state by filing an application with the Montana highway commission which shall contain the following information, and such other information pertinent to vehicle registration as the Montana highway commission may require:

(a) Total fleet miles. This shall be the total number of miles operated in all jurisdictions during the preceding year by the vehicles in such fleet during said year.

(b) In-state miles. This shall be the total number of miles operated in this state during the preceding year by the vehicles in such fleet during said year.

(c) A description and identification of each vehicle of such fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet shall be accompanied by a fee payment computed as follows:

(a) Divide in-state miles by total fleet miles.

(b) Determine the total amount necessary to register each and every vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by section 53-122, R. C. M., 1947, as amended, and section 53-615, R. C. M., 1947, as amended and such property taxes if any be due thereon.

(c) Multiply the sum obtained under subsection (2) (b) hereof by the fraction obtained under subsection (2) (a) hereof.

History: En. Sec. 12, Ch. 206, L. 1963;
amd. Sec. 2, Ch. 88, L. 1965.

Amendment

The 1965 amendment added "and such property taxes if any be due thereon" at the end of paragraph (2) (b).

53-713. Registration and identification of proportionally registered vehicles, effect of such registration. (1) The Montana highway commission shall register the vehicles so described and identified and shall issue a license plate or plates, or a distinctive sticker, or other suitable identification device, for each vehicle described in the application upon payment of the appropriate fees, and property taxes as provided by law, for such application and for the stickers or devices issued. A fee of two dollars (\$2.00) shall be paid for each license plate, sticker or device issued for each proportionally registered vehicle. A registration card shall be issued for each proportionally registered vehicle. Such registration card shall, in addition to other information required by Title 53, bear upon its face the number of the license, sticker or other device issued for such proportionally registered vehicle and shall be carried in such vehicle at all times.

(2) Fleet vehicles so registered and identified shall be deemed fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, no such vehicle shall be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission and unless said vehicle is being operated in conformity with such authority or rights.

History: En. Sec. 13, Ch. 206, L. 1963;
amd. Sec. 3, Ch. 88, L. 1965.

Amendment

The 1965 amendment inserted "and property taxes as provided by law" in the first sentence of subsection (1).

Effective Date

Section 4 of Ch. 88, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

53-714. Proportional registration cannot be in a single jurisdiction. The right to the privilege and benefits of proportional registration of fleet vehicles extended by this act, or by any contract, agreement, arrangement or declaration made under the authority of this act, shall be subject to the condition that each fleet vehicle proportionally registered under the authority of this act shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.

History: En. Sec. 14, Ch. 206, L. 1963.

53-715. Registration of additional fleet vehicles. Vehicles acquired by the owner after the commencement of the registration year and subsequently added to a proportionally registered fleet shall be proportionally registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular registration fees due with respect to such vehicle for the remainder of the registration year.

History: En. Sec. 15, Ch. 206, L. 1963.

53-716. Withdrawal of fleet vehicles, credits and accounting. If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under the provisions of this act, the owner of such fleet shall so notify the Montana highway commission on appropriate forms to be prescribed by the Montana motor vehicle reciprocity board. The Montana highway commission may require the owner to surrender proportional registration cards and such other identification devices which have been issued with respect to such vehicles as the Montana highway commission may deem advisable. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from the service of the registrant, the unused portion of the gross vehicle weight fees paid with respect to such vehicle, which shall be a sum equal to the amount paid with respect to such vehicle when it was first proportionally registered in such registration year, reduced by $1/12$ of the total annual gross vehicle weight fee of such vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the Montana highway commission, shall be credited to the proportional registration account of such owner. Such credit shall be applied against liability for subsequent additions to be prorated during such registration year or for additional fees due upon audit under subsection 19 [53-719] hereof. If any such credit is less than five dollars (\$5.00), no credit shall be made or entered. In no event shall such amount be credited against fees other than those for such registration year, nor shall any such amount be subject to refund.

History: En. Sec. 16, Ch. 206, L. 1963.

53-717. New fleet—estimated mileage. The initial application for proportional registration of a fleet shall state the mileage data with respect to such fleet for the preceding year in this and other jurisdictions. If no

operations were conducted with such fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The Montana highway commission shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The Montana highway commission may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness thereof.

History: En. Sec. 17, Ch. 206, L. 1963.

53-718. Fleet registration may be denied. The Montana highway commission may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another jurisdiction if the Montana motor vehicle reciprocity board shall find that such other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

History: En. Sec. 18, Ch. 206, L. 1963.

53-719. Preservation of proportional registration records. Any owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four (4) years following the year or period upon which said application is based. Upon request of the Montana highway commission, the owner shall make such records available to the Montana highway commission at its office for audit as to accuracy of computations and payments or to pay the reasonable costs of an audit at the home office of the owner, by a duly appointed representative of the Montana highway commission. The Montana highway commission may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner.

History: En. Sec. 19, Ch. 206, L. 1963.

53-720. Relation to other state laws. The provisions of this act shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as in this section expressly provided.

History: En. Sec. 20, Ch. 206, L. 1963.

53-721. Suspension of reciprocity benefits. Agreements, arrangements or declarations made under the authority of this act may include provisions authorizing the Montana highway commission to suspend or cancel the exemptions, benefits or privileges granted thereunder to a person who violates any of the conditions or terms of such agreements, arrangements or declarations or who violates the laws of this state relating to motor vehicles, or rules and regulations lawfully promulgated thereunder.

History: En. Sec. 21, Ch. 206, L. 1963.

53-722. Agreements to be written, filed and available for distribution. All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed in the office of the secretary of the Montana motor vehicle reciprocity board. The secretary of the Montana motor

vehicle reciprocity board shall provide copies for public distribution upon request.

History: En. Sec. 22, Ch. 206, L. 1963.

53-723. Reciprocity agreements in effect at time of act. All reciprocity and proportional registration agreements, arrangements and declarations relating to vehicles, in force and effect at the time this act becomes effective, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements.

History: En. Sec. 23, Ch. 206, L. 1963.

53-724. Act part of and supplement to motor vehicle registration law. This act shall be a part of Title 53, R.C.M., 1947, as amended, and supplemental to the motor vehicle registration law of this state.

History: En. Sec. 24, Ch. 206, L. 1963.

Separability Clause

Section 25 of Ch. 206, Laws 1963 read "Severability. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be

affected as a result of said part being held unconstitutional or invalid."

Repealing Clause

Section 27 of Ch. 206, Laws 1963 read "Section 53-625, R.C.M., 1947, as amended, is repealed."

Effective Date

Section 28 of Ch. 206, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

CHAPTER 8—MARKINGS ON TRUCKS AND HEAVY VEHICLES

Section 53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications.

53-802. Dealers and manufacturers exempt.

53-803. Penalty for violations.

53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications. No motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds shall operate upon the highways of the state of Montana unless there shall be displayed on both sides of each vehicle operated under its own power, either alone or in combination, the name, or trade name and address or M.R.C. or I.C.C. certificate number of the person or corporation under whose jurisdiction the vehicle, or vehicles, is or are being operated.

The display of name must be in letters in sharp contrast to the background and size, shape, and color readily legible in daylight from a distance of fifty (50) feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, so prepared as to otherwise meet the identification and legibility requirements of this act.

History: En. Sec. 1, Ch. 133, L. 1963.

Title of Act

An act to provide for the marking of motor vehicles operating on the highways of the state of Montana, providing a penalty and providing an effective date.

53-802. Dealers and manufacturers exempt. This act shall not apply to motor vehicles being transported to dealers, from point of manufacture, or from one dealer to another, or when being demonstrated to a prospect, or delivered to a buyer from a dealer or a manufacturer.

History: En. Sec. 2, Ch. 133, L. 1963.

53-803. Penalty for violations. Any person convicted of violating this act shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than one (1) month, or both.

History: En. Sec. 3, Ch. 133, L. 1963.

Effective Date

Section 4 of Ch. 133 read "The effective date of this act is July 1, 1963."

TITLE 55—NEGOTIABLE INSTRUMENTS

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

55-101 to 55-1801. (8401 to 8493, 8495 to 8597) Repealed.

Repeal

These sections (Sec. 4240, Civ. C. 1895; Secs. 5842 to 5934, 5936 to 6037a, Rev. C. 1907; Secs. 8401 to 8493, 8495 to 8597,

R.C.M. 1921), the Uniform Negotiable Instruments Law, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

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